

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
ATLANTIC COUNTY
DOCKET NO.: ATL-L-2648-15
A.D. # _____

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IN RE: JOHNSON AND JOHNSON) TRANSCRIPT
TALCUM-BASED POWDER) OF
PRODUCTS LITIGATION) MOTION
)

Place: Atlantic County Civil Crt.
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Date: April 10, 2024
AFTERNOON SESSION

BEFORE:

HONORABLE JOHN C. PORTO, J.S.C. AND
RUKHSANAH L. SINGH, U.S.M.J.

TRANSCRIPT ORDERED BY:

SEAN GARRETT, ESQ., (Faegre Drinker)

APPEARANCES:

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MICHAEL SABO, ESQ., (Fox Rothschild, L.L.P.)
Attorneys for the Plaintiff

ANDY BIRCHFIELD, ESQ., (Beasley Allen)
Attorney for the Plaintiff

*(Appearances continued)

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1 (Continuation of day's proceeding from morning)

2 (Afternoon session commenced at 1:36 p.m.)

3 THE COURT: Thank you. Please be seated.

4 We're back on the record. All Counsel is here. Mr.
5 Conlon is on the -- the witness stand. Mr. Brody,
6 you're going to be closing up -- you know -- wrapping
7 up, so to speech -- so to speak. What I want to do is
8 the Court is going to address the in camera at this
9 point issues.

10 The Court is not inclined to accept any
11 documents for an in camera review except there -- if
12 there are any allegations of perjury, not saying that
13 there are. But, Mr. Brody, if J and J wants to review
14 and redact any particular documents it may do so in a
15 manner that could be shared with Mr. Pollock and that
16 would be limited to Mr. Pollock's eyes only.

17 So, look at it. If you think there's
18 attorney client -- and we've all seen redacted attorney
19 -- you know -- time sheets with regard to that. But,
20 that's how we're going to address the in camera review
21 Mr. Brody.

22 MR. BRODY: Okay. Thank you Your Honor.

23 THE COURT: You're welcome. Mr. Brody, you
24 may continue.

25 MR. BRODY: Thank you. And, I'll be able to

1 wrap this up very quickly I think.

2 DIRECT EXAMINATION BY MR. BRODY

3 Q So, Mr. Conlan, when we left off I had asked
4 you questions about the November 2nd publication that
5 you authored that is at tab 15, right?

6 A Yes.

7 Q All right. A week later, November 9th, you
8 sent a letter to Johnson and Johnson's board of
9 directors, right?

10 A Yes.

11 Q And, if you would turn to tab seven in the
12 notebook you have there?

13 A Yeah, I'm there.

14 Q All right. That's the letter you wrote?

15 A Yes.

16 Q In that letter you attached what you said was
17 a minimum \$19 billion price tag to your proposal,
18 correct?

19 MR. POLLOCK: Objection --

20 A Well, I said 19 billion or such greater amount as
21 determined by the auditors P.W.C.

22 Q Right. So, that's a minimum of 19 billion.
23 19 billion or greater, right?

24 A Yes.

25 Q All right. And, you attached a settlement

1 matrix as an exhibit to the letter that you wrote,
2 correct?

3 A Yes.

4 Q And, that was the settlement matrix that you
5 had first referred to in hearing exhibit four, the
6 email that you wrote to Mr. Van Arsdale on October 18th
7 of 2023?

8 A I believe so, yes.

9 Q So, about three weeks earlier, correct?

10 A Yes.

11 Q In your letter you told the Johnson and
12 Johnson board that before you sent the matrix to J and
13 J, Legacy's proposal had been reviewed and was
14 supported by leadership counsel on both the federal
15 M.D.L. and in State Court cases across the country,
16 right?

17 A Yeah. I'm looking for the exact language but that
18 sounds right.

19 Q Well, it's on the first page. I'll let you
20 find it. Second paragraph.

21 A Right.

22 Q It's on -- on page one.

23 A I'm just -- I'm looking for it on page one. I --
24 I thought it was on page two.

25 UNIDENTIFIED MALE: (indiscernible)

1 BY MR. BRODY:

2 Q It's the -- it's the paragraph -- paragraph
3 that starts, "Put simply."

4 A Okay.

5 MR. POLLOCK: It's plenary 62.

6 THE WITNESS: Right. Yes.

7 BY MR. BRODY:

8 Q And, that was true, right?

9 A Yes.

10 Q That plaintiff's Counsel reviewed that
11 settlement matrix before you shared it with J and J,
12 correct?

13 A Yes. We got it from --

14 Q And -- and you knew that --

15 A -- we got it from Beasley Allen.

16 Q Beasley Allen?

17 A Yeah.

18 Q Okay. So, when you're referring to
19 plaintiff's Counsel you're referring to Beasley Allen?

20 A I am.

21 Q All right. And, you knew that Beasley Allen
22 supported it because you had discussed it with them,
23 correct?

24 A Yes.

25 Q All right. And, you had been communicating

1 with Mr. Birchfield for over six months by November
2 9th, 2000 -- 2023, correct?

3 A Yeah, on and off.

4 Q Yeah. And, you didn't get a waiver from J
5 and J for any of that, did you?

6 MR. POLLOCK: Objection. It assumes facts in
7 evidence -- not in evidence that he had to get a
8 waiver. I'm simply objecting to --

9 THE COURT: Well, he just asked -- he asked
10 the question. So --

11 MR. POLLOCK: I know.

12 THE COURT: -- I'll overrule the objection.

13 But --

14 THE WITNESS: Right. Same answer as before.
15 I didn't think I needed one including because I wasn't
16 practicing law and it was a proposal, it's consensual.

17 BY MR. BRODY:

18 Q And, you didn't get a waiver?

19 A Correct.

20 Q You didn't ask for one?

21 A Correct.

22 Q And, you hadn't disclosed to J and J that you
23 were communicating with Mr. Birchfield until that
24 October 18th email that you sent to Mr. Van Arsdale,
25 right?

1 A Other than the reference in the February 2nd
2 proposal.

3 Q Right. The -- the document we saw. By the
4 way, this -- this proposal you -- you -- this February
5 2nd letter, you brought a copy of this with you to
6 court in -- in the hearing exhibit binder, right?

7 A Yes.

8 Q Right. And -- and Mr. Pollock had copies of
9 it ready to hand to me already marked with an exhibit
10 sticker, right?

11 A Yeah, I -- I don't know what Mr. --

12 Q To the extent you know.

13 A I don't know. But -- but Mr. Pollock did have a
14 copy.

15 Q Okay. Did you meet with Mr. Pollock in
16 preparation for your testimony today?

17 A With my Counsel, yes.

18 Q And, Mr. Pollock?

19 A Yes.

20 Q All right. And, by the way, not only did you
21 never tell J and J before -- let me -- let's put this
22 aside -- before the 18th of October that you were
23 meeting with Mr. Birchfield, you never told that
24 mediators in the LTL-2 bankruptcy that you had
25 previously represented J and J on the talc matters, did

1 you?

2 MR. POLLOCK: Your Honor, asking directly
3 mediation privileged communications. And, this is what
4 the mediators -- I don't know how you answer that
5 question without violating the privilege.

6 BY MR. BRODY:

7 Q Let me ask you this, Mr. Conlan, the
8 mediators were not aware in LTL-2 that you had
9 previously represented Johnson and Johnson in talc
10 matters, were they?

11 A Not that I'm aware of.

12 MR. BRODY: All right. Thank you. That's
13 all I have.

14 THE COURT: Okay. Mr. Pollock?

15 MR. POLLOCK: Your Honor -- Your Honor --

16 UNIDENTIFIED MALE: (indiscernible)

17 MR. BRODY: -- yeah -- one -- just one
18 housekeeping matter. Mr. Pollock had asked that this
19 document be marked for identification purposes as
20 plaintiff's three. We would just ask that the Court
21 receive it as part of the -- actually as -- as
22 evidenced in the record.

23 THE COURT: Mr. Pollock?

24 MR. POLLOCK: No objection.

25 THE COURT: Okay. So, that will be --

1 candidly we were going to ask that question with regard
2 to that particular document since it -- it was
3 prominently featured to this point in questioning Mr.
4 Conlan.

5 MR. POLLOCK: (indiscernible) all day so I'm
6 going to go for it.

7 THE COURT: So, that -- that -- that will be
8 part -- if we can have a copy when -- when you close
9 Mr. Pollock that is -- will be marked into evidence.

10 MR. POLLOCK: If -- if Your Honors are dying
11 for a copy I'll give you one right now.

12 THE COURT: No.

13 MR. POLLOCK: Proceed?

14 THE COURT: You may proceed.

15 MR. POLLOCK: Thank you. With the Court's
16 permission I may both sit and stand depending upon
17 where my eye sight's at, okay?

18 THE COURT: Your pleasure. Do you want to
19 use the podium or --

20 MR. POLLOCK: Oh, I'm good. I have a
21 condition called dry eye and I -- I -- I don't create
22 enough tears. So, I got enough issues as my life
23 partner said, for my -- for myself.

24
25 CROSS EXAMINATION BY MR. POLLOCK

1 Q All right. Structural optimization and
2 disaffiliation. You -- you heard me ask Mr. Haas
3 whether that would work and he did not like the idea.
4 He said -- I think -- I'm going to slaughter it. But,
5 one it doesn't account for futures, it doesn't account
6 -- the auditors don't like it and there were some other
7 problems with it. Do you agree with Mr. Haas that your
8 approach -- the Legacy approach would not work?

9 A I do not agree with Mr. Haas.

10 Q Can you please explain to the Court why you
11 think Mr. Haas got it wrong?

12 A Structural optimization and disaffiliation of
13 solvent mass tort companies, entities that are
14 themselves liable, the entire point and purpose is that
15 it does capture future claims as well as current
16 claims. The entities themselves that are liable,
17 contractually or in tort, are acquired by us so the
18 entities that remain don't have liability in the tort
19 system or contractually.

20 By definition, therefore, it captures all current
21 and all future claims. That's quite frankly, the main
22 purpose of it. Number two. at the time that we acquire
23 those, in this case talc liable, group of entities the
24 auditors -- and this is a condition to us being willing
25 to do it -- have to agree that those entities we're

1 acquiring are adequately or more than adequately
2 funded. Why do they need to do that?

3 Because in order to remove the non cash charge
4 from the financials of those companies the auditors
5 must so conclude. That way there is no fraudulent
6 transfer risk. There is no unlawful dividend risk.
7 And, the auditors are tough. But, when they say
8 "There's enough money there to remove the non cash
9 charge," there's enough money there to remove the non
10 cash charge.

11 And so, we can't and are not interested in
12 acquiring companies unless the company agrees. That's
13 number one. And, number two, the auditors are
14 comfortable removing the non cash charge. And, I know
15 that's a lot of complicated talk but it's the core of
16 it.

17 Q So, bear in mind, I'm a simple country
18 lawyer. So, I -- I don't -- this -- this stuff is
19 beyond me. When you talk about non cash charge, can
20 you spell that one out a little bit? Because I -- I
21 apologize, I'm not getting it. I don't know what it
22 means.

23 A I can. In the United States -- and I can refer to
24 outside the United States, GAP, generally accepted
25 accounting principles is what rules accounting

1 standards, it's largely what rules -- what the SEC says
2 you must put in your financials. Under a particular
3 provision which is GAP ASC 450, a public company must
4 take a non-cash charge, meaning set up a -- a
5 provision, for the probable and estimable amount of a
6 contention liability.

7 So, when you look at really any public company
8 that has a mass tort liability that is current and
9 future they have a number. And, that number is
10 provided by a combination of their actuaries and their
11 auditors to give the world notice that there's a
12 problem here. So that investors can take it into
13 account, for example, in deciding how much they'll pay
14 for the stock.

15 In order to remove that non cash charge the
16 auditors have to conclude not only that the entities
17 that are liable are no longer owned by the group but
18 they were adequately funded at the time that they were
19 disaffiliated so that it won't come back on the
20 company. In the United States it's called GAP ASC 450
21 and there's an equivalent in Europe.

22 Q And -- in order to -- to fill this non cash
23 charge gap, whatever you just said, do you have to have
24 some clarity as to what the number is that you're
25 ultimately looking at -- the auditors are looking at?

1 A Sum is an important modifier. The auditors look
2 at all the data points. So, for example, in the case
3 of J and J what the auditors would look at is, how many
4 people had already agreed to accept the \$8.9 billion
5 plan, the fact that the attorney generals, from what I
6 read, are close to agreeing to a resolution. The fact
7 that mesothelioma claimants are, in significant number,
8 agreeing to a resolution.

9 They would also be impacted by the fact that
10 there's a potential settlement for current ovarian
11 claimants. Those are all data points that the auditors
12 would take into account in deciding what the amount is
13 that has to be essentially put into the entities that
14 are disaffiliated in order for them to remove the non
15 cash charge. They don't have certainty by definition
16 because they're coming up with a number but the -- and
17 the number isn't certain because it's current and
18 futures.

19 Q Is structural optimization and disaffiliation
20 a J and J confidence?

21 A In no way, shape, or form.

22 MR. POLLOCK: And, Your Honor, I've got a
23 times -- time frame I'm going to share with the Court.
24 I thought we could use it together. And, I may
25 periodically ask -- Michael could you help me for a

1 second -- I may periodically ask Mr. Conlan and Mr.
2 Birchfield -- do it right here -- this is perfect --
3 this is perfect -- to share with me. Because I -- I
4 think the timing -- you and I talked about this Judge
5 Porto (indiscernible) talked about it -- I think timing
6 of events is really important.

7 And, I'd like to just break briefly from my
8 line of questioning -- Michael you can step out of the
9 way. That's great. So, I've -- I've got a chart that
10 lays out -- I'm not asking about the Beasley Allen time
11 frame. But, as far as the Jim -- Conlan time frame --
12 and you're welcome to stand up sir if you're -- if
13 you're -- with your permissions Your Honor, if he wants
14 to walk around I assume that's okay?

15 THE COURT: Yeah, if he wants to approach the
16 easel -- that's fine.

17 MR. POLLOCK: Yeah, you don't have to -- so
18 I'm nearsighted. I can't see far.

19 BY MR. POLLOCK

20 Q So, this one's June 19 -- June 19 -- 1988, is
21 that about when you started at Sidley (phonetic)?

22 A Yes.

23 Q And, did you spend your entire time at Sidley
24 until roughly May 2020?

25 A Yes.

1 Q And then did you make a mistake and decide to
2 go back to the practice of law at another law firm?

3 A Well, I -- I didn't leave the practice of law. I
4 went from Sidley to Faegre Drinker.

5 Q Okay. And, how long did you stay with Sidley
6 and Faegre -- to go to -- to go to Faegre?

7 A I was there about 20 months.

8 Q Okay. So, that would be from roughly June
9 2020 to what?

10 A To February, March 2022.

11 Q Okay. I don't have that one marked on there
12 but we can mark those on -- Mike you can play Vanna
13 White if you want to and -- and write some of these in
14 as he goes through. With Your -- with Your Honors'
15 permission what I may do is have Mike just kind of
16 write in the time frame (indiscernible) want the
17 witness to do it (indiscernible) the witness to do it.

18 THE COURT: Perfect. What -- whatever --
19 whatever is easier.

20 MR. POLLOCK: Okay. I'm just trying to move
21 it along. So, if you can write in the time period you
22 left, that would be great.

23 BY MR. POLLOCK

24 Q What was the date again Jim?

25 A I leave Sidley in June of 2020.

1 Q Yes.

2 A Having been there since the summer of 1988. Hard
3 to believe that long. And, I was at Faegre Drinker
4 about 20 months from June 2020 to February March 2022.

5 Q So, Mike, if you can just circle the period
6 for Faegre, whatever Jim said, and just call that
7 Faegre that would be great. Okay. The -- Jim if you
8 could tell us looking at this chart which is just a
9 demonstrative -- it's not going into evidence unless
10 the Court directs otherwise -- the -- what -- during
11 what time period did you talk about structural
12 optimization and disaffiliation?

13 During what time did you work on -- when you were
14 at Sidley and Faegre did you talk historically about
15 it? When did you actually work on that concept?

16 A I -- I began the process of structurally
17 optimizing companies that came before disaffiliation in
18 about 2009, 2010 and it was in context of big companies
19 who had asbestos liabilities initially and who wanted
20 to remove the existential threat that asbestos would
21 eat all of the entities in the -- in the family of
22 companies rather than just potentially the entities
23 that were themselves liable.

24 So, if you could imagine a company with 500
25 entities and there were four that were actually liable

1 for asbestos, in the tort system or contractually, the
2 goal was to structurally optimize those four, removing
3 all the operating assets, but making sure they were
4 adequately capitalized with liquid funds so that they
5 could operate in the tort system. But, they -- you
6 would contain the liability at that level.

7 Q So, I just want a beginning date. Like, when
8 did you start working on this stuff?

9 A 2009.

10 Q Okay. Just say 2009 -- disaffiliation -- I
11 can't even spell it -- start date. Mr. Brody had asked
12 you -- I'm going to skip for one second -- Mr. Brody
13 had asked you about a proposal which I think is at
14 exhibit seven. Yes. Exhibit seven. And, it's got an
15 Excel chart at -- oh I'm sorry -- it's exhibit -- where
16 is the Excel chart? I apologize.

17 UNIDENTIFIED MALE: It is seven. That's the
18 legacy letter November 9th.

19 MR. POLLOCK. Yeah, but is that the Excel
20 chart one?

21 UNIDENTIFIED MALE: Yes (indiscernible)
22 BY MR. POLLOCK

23 Q Okay. At the last page -- yeah -- the last
24 page of it. So, it's -- it's plenary 67. Can you look
25 at plenary 67?

1 A Yes.

2 Q Now, we had talked about -- God I forgot the
3 word already -- the -- when we were talking about
4 quantification (sic) -- specification -- whenever you
5 used that word -- you used a strange word for it. It
6 wasn't just affiliation. It wasn't association. You
7 -- when you were talking about the gap issue you needed
8 to quantify the risk there was a -- anyway -- you had
9 said the arbitrators -- the auditors need a specific
10 number. They need something to be happy with?

11 A Yeah. They -- they need to come up with their
12 view of how much money needs to be in the liable
13 entities at the time that they're acquired, for
14 example, by a legacy in order for the auditors to
15 remove the non cash charge from the financials of the
16 seller.

17 Q That's the one I was looking for.

18 A Yes.

19 Q Non cash charge. I apologize. The -- with
20 regard to the -- the -- approach that you had -- that
21 you're talking about, structural optimization and
22 disaffiliation, is it fair for me to say it's somewhat
23 like spandex? That you can -- whether the number is
24 \$20 billion, \$30 billion, \$12 billion, assuming that's
25 a fair number, anything -- whatever the number is it is

1 and that your approach would work based upon that
2 number assuming it's not too small?

3 A Correct.

4 Q Okay. And, the -- the matrix that's attached
5 which is on 67, have you seen that -- you've seen that
6 matrix before?

7 A Yes.

8 Q And, you attached it to your letter?

9 A Yes.

10 Q Have you seen other matrices?

11 A In my life?

12 Q In this matter? In this -- in this matter.
13 The -- the -- in discussions with Beasley Allen,
14 discussions with J and J, have you seen other matrices?

15 A Yes, I've been exposed to other matrices.

16 Q And, it would be fair to say that you at
17 Legacy are agnostic as to what the number is because
18 your approach is roughly the same whether it's \$15
19 billion or \$30 billion, it doesn't really matter a
20 whole lot?

21 A Or -- correct. Or whether it's talc or asbestos
22 or herbicides or pesticides or P-fabs (phonetic) to
23 name a few.

24 Q At what point in time did you first -- and
25 you can look at the -- chronology if you'd like and --

1 and Mike I'm going to ask you to mark this one on.

2 When did you first hear about a \$19 billion number?

3 Where did that come from? Do you know?

4 A The 19 billion?

5 Q Yes sir.

6 A It came from us, from Legacy. It was January 30,

7 2023. I alluded to this earlier. The six -- sorry --

8 the Third Circuit issued its opinion, 58 page opinion,

9 finding that the J and J filing the -- the L.T.L.

10 filing was not in good faith. That afternoon or late

11 morning the market capitalization of J and J, the value

12 of all of its stock declined \$18 billion.

13 And, what that said to us is that the market --

14 we're big believers in the market -- that the market

15 didn't think the liability was 18. The market thought

16 it was 18 more than what it thought it was the day

17 before. Because the liability was there, obviously,

18 before. But, the market traded stock down \$18 billion

19 -- it recovered some later in that day. But, it was

20 clear the market really didn't like this liability.

21 Which is common, the market really doesn't like

22 contingent liabilities of -- for public companies.

23 Our own view is that the market was exaggerating

24 the liability. But, the market clearly thought it was

25 a big number. That's why on February 2nd, just a

1 couple of days later, the number that's in that letter
2 adds up to 17.6. It was 16 from J and J and 1.6 from
3 us, 17.6. And, again, there's a variety of factors
4 that go into that. One is what the market thinks.
5 Another -- and I'm going to try to keep this
6 interesting -- is the discount rate used to determine
7 the P-V of the liabilities is extremely important.

8 What that means is that as interest rates go up,
9 for example on the tenure today it's between 4.3 and
10 4.4, the yield on the U.S. tenure obligation -- as that
11 number goes up the liability goes down because the P-V
12 of the liabilities goes down the higher the discount
13 rate goes up. So, frankly, as interest rates rise the
14 P-V of the liability declines.

15 So, as we all know in America today, that tenure
16 yield has been moving all over the place. Mostly up in
17 the last few years. So, it's not as simple as just
18 looking at the market. It's not as simple as just
19 looking where the yield on the tenure is. It's looking
20 at a variety of factors. Probably what's the least
21 interesting is what the experts think it is because
22 that's not the world we live in.

23 Q Mr. Brody asked you some questions right
24 before we broke for lunch and I don't have a
25 transcript. But, I'm going to do the best I can. You

1 were trying to position yourself for the Legacy toggle.

2 Hold on. You wanted to make money, and he specifically
3 was pointing to you meaning I think Legacy, not you
4 individually, although I'm sure you would.

5 A It would be both.

6 Q And, he also said -- I can't remember the
7 other one -- but in any event that -- am I correct in
8 understanding that the proposal you're making would
9 financially benefit Legacy?

10 A Yes.

11 Q And, that part of the Legacy proposal is
12 premised upon the fact that if you buy these
13 liabilities from J and J you'll be holding onto them
14 for a little bit and that you make some interest on
15 that money?

16 A That's correct. To -- to be specific --

17 Q Yes.

18 A -- I mentioned the ten year yield today at 4.3 to
19 4.4. We would absolutely expect, could virtually
20 guarantee that we would make 1.6. to 1.7 percent more
21 than that by simply investing in AA corporate. So,
22 almost no risk, just matching the durations.

23 Q And, to be clear, that money is part of
24 Legacy's investment proposal and structure because
25 that's how you make -- hopefully you take on risk and

1 you make money?

2 A Correct. We hope.

3 Q But, if you make money that doesn't -- let's
4 assume you'll hold onto the money for five years as
5 opposed to one year. That doesn't increase the payout
6 to the talc claimants, correct?

7 A Our incentive is to hold onto the money as long as
8 possible to pay the claimants within the
9 (indiscernible) propriety -- you know -- not pay them
10 soon but pay them over time. Why? Because we're
11 making that 1.6 to 1.7 percent spread. On the other
12 hand, we're a rational defendant. We're not going to
13 hold on and get popped in judgement. So, it's the same
14 kind of balance that a company has when it's defending
15 a mass tort.

16 Q He -- Mr. Brody mentioned -- and I'm
17 switching gears here for a second. I'm sorry, I'm
18 going to be jumping around a little bit.

19 A Okay.

20 Q He mentioned that you and Mr. Murdica were
21 leading at one point when he was talking about, I
22 believe, the Imerys matter. To put that in context,
23 were you leading at any point in time the J -- J and
24 J's efforts in bankruptcy or were their other firms
25 like Weil, Gotshal and Jones Day that were really

1 leading the charge? What is your view?

2 MR. BRODY: I'm just going to object to it
3 because I think the question misstates what my question
4 was to Mr. Conlan.

5 THE COURT: Why -- why don't you create the
6 question that you would like Mr. Conlan -- you know --
7 I -- I don't want to say the record's mis
8 characterizing the question once we get a read back at
9 some point, which who knows if we can. But, I
10 understand the objection. Why don't -- why don't you
11 make the question your own?

12 MR. POLLOCK: Sure.

13 BY MR. POLLOCK

14 Q If I were to say that you, Jim Conlan, had
15 led J and J's bankruptcy efforts during the time that
16 you were at Faegre would that be a true statement?

17 A That would not be a true statement.

18 Q Were there other people, other law firms that
19 were in your view far more significantly involved on
20 behalf of J and J?

21 A Yes. And, narrowing first to the subject matter
22 of bankruptcy, lead Counsel -- far and away lead
23 Counsel for J and J and the Imerys North America
24 bankruptcy was Weil Gotshal, a very capable and big
25 player in the world of bankruptcy. In LTL-1 it was

1 Jones Day as Counsel for L.T.L. and it was White and
2 Case as Counsel for J and J in the L.T.L. bankruptcy.
3 Again, that's just bankruptcy.

4 Jim Murdica is resolution Counsel. Jim Stengel
5 and other were litigation Counsel. There were a
6 variety of different roles. But, in the world of -- of
7 bankruptcy our role -- it was Weil Gotshal for Imerys,
8 it was Jones Day for L.T.L. and it was White and Case
9 for Johnson and Johnson in the L.T.L. bankruptcy.

10 Q Did Jones Day show you the L.T.L. filing
11 before J and J filed it?

12 A May I answer that?

13 THE COURT: Yeah, sure.

14 A No.

15 Q You mentioned that you had had a long career
16 at Sidley. Can you walk the Court briefly through your
17 evolution was? And, I don't want to know what your
18 first memo was and that kind of thing. I'm talking
19 about -- I -- I want to go to the point where you're --
20 did you ever get a role of leadership? Did you ever
21 get a role that was significant at Sidley while you
22 were there?

23 A Yes. Over time.

24 Q What roles did you -- can you tell me
25 approximately what -- I want to hit the highlights of

1 your career. If your mother was here, what -- what
2 were the best things that Jim Conlan did at Sidley?
3 What would you tell her?

4 A Well, I'll just describe in terms of milestones.
5 I graduate from law school from the University of Iowa
6 in 1988. I had been a summer associate at Sidley the
7 year before so then I join in 1988 as a first year
8 associate. And, I immediately join the bankruptcy
9 group.

10 You had to pick a group right away at Sidley.
11 Eight years later I became a partner at Sidley along
12 with a lot of other people. I don't remember what
13 precisely the year was I became vice chairman of the
14 restructuring practice.

15 Q About when was that Jim?
16 A I would say that was like -- I became partner in
17 1996, I think vice chair of the restructuring practice
18 was probably in 2002, 2003 -- I'm kind of going by what
19 my age was. Shortly thereafter I became co chair of
20 the firm wide bankruptcy practice. Thereafter I became
21 chairman of the firm wide bankruptcy practice. And, I
22 suppose other things is I went on the executive
23 committee.

24 Q About when was that?
25 A I think it was about 2005.

1 Q Okay. And, did you remain on the executive
2 -- committee until you departed?

3 A Until shortly before.

4 Q Okay. And, during that time period did you
5 have discussions with other lawyers and other law firms
6 about potentially merging with Sidley?

7 A Yes.

8 Q And, did you commit to those people that you
9 would keep those discussions confidential?

10 A Yes.

11 Q And, did they have to reveal to you how their
12 practice was going, how their group was behaving, what
13 kind of monetary income they were making, what their
14 billing rates were? All kinds of sensitive information
15 that were confidential to those law firms?

16 A Yes.

17 Q And, did you keep -- did you commit to
18 keeping that information confidential?

19 A Always.

20 Q And, did you do so?

21 A Pardon me?

22 Q Did you do so?

23 A I did.

24 Q Did you also get the joy of dealing with
25 problem partners and people who had issues? Affairs

1 and got accused of alcoholism, that kind of thing?

2 A Yes.

3 Q And, did you have -- did you commit to
4 keeping those things confidential as well?

5 A I did.

6 Q And, did you do so?

7 A I did.

8 Q Has anybody ever accused you at any point in
9 time from your work at Sidley that you broached those
10 confidences? You -- you -- you -- you told something
11 that you shouldn't have told out of school?

12 A Not that I recall.

13 Q There was a discussion regarding mediation.
14 And, I'd like to get this a little clear in my head if
15 I can. And, I don't know if you can do this without
16 documents. Do you know approximately when the
17 mediation efforts were that involved the -- the
18 documents that Mr. Brody was asking about? He was
19 asking about -- did you send drafts back and forth --
20 do you know when the mediation was?

21 A I don't know how long the mediation went. The --
22 when Legacy was involved I recall as follows. In May
23 of 2023 Scott Gilbert who is a part of Legacy and a
24 long time colleague you might say or someone who is
25 very familiar with Eric Green (phonetic), was talking

1 to Eric Green. Eric Green was exploring Scott's new
2 role at Legacy. He's a senior officer. And, Scott was
3 explaining how Legacy works and undoubtedly promoting
4 it in some respects as well to Eric Green. As a result
5 of that conversation some time in May of 2023, Scott
6 and Scott alone, had a meeting with the mediators.

7 Q Who are the mediators?

8 A Mr. Green, Mr. Russo (phonetic) and then Fuad
9 (phonetic) who is really Eric Green's right hand
10 person.

11 Q Okay.

12 A And, they had that meeting. I wasn't in that
13 meeting. But, it -- I had the impression it went a few
14 hours and it was a video. And, in the wake of that
15 there was a desire to have a more full meeting --

16 MR. BRODY: I'm sorry -- if we -- if we are
17 going to get into what the mediators wanted -- I mean,
18 I'm in a situation here where the plaintiff
19 (indiscernible) committee has claimed mediation
20 privilege over all of its communications and now we're
21 getting into -- if we're talking about May we're
22 talking about during the mediation. And, I don't know
23 if we should be going down the road of -- of what the
24 mediators want. Especially in a situation where the
25 mediators have indicated that they believe questions

1 about what they wanted are things that they can't
2 disclose.

3 THE COURT: Thank you Mr. Brody. Mr.
4 Pollock?

5 MR. POLLOCK: I actually have no problem with
6 that objection. I -- I -- I can move on.

7 THE COURT: Okay.

8 MR. BRODY: Yes, the -- just to update the
9 Court as to -- as the Court is aware the mediators
10 responded to depositions on written questions. They
11 answered one of the questions -- well two really. They
12 answered one of the four substantive questions without
13 objection and all three of them indicated that at no
14 point were they aware during the course of the LTL-2
15 mediation that Mr. Conlan had been Counsel for J and J
16 on the talc litigation.

17 MR. POLLOCK: So, on that one Judge I -- the
18 mediators said what the mediators said. I'd like the
19 record to simply be they were asked that -- upon the
20 direction of Judge Singh to answer questions in
21 writing. They did so. Whatever it says it says. I --
22 I would rather not have it characterized by me or Mr.
23 Brody.

24 THE COURT: Sure.

25 MR. POLLOCK: It says what it says. And, we

1 should -- we should -- should we post -- I assume we
2 should mark those -- I thought we already agreed to
3 mark those into identification. Right? And, they're
4 moving into evidence? Or no?

5 MR. BRODY: They -- no objection to then
6 being part of the record.

7 MR. POLLOCK: Let's move them into evidence.

8 THE COURT: That's fine. Okay.

9 MR. POLLOCK: I may move on?

10 THE COURT: Yes.

11 BY MR. POLLOCK

12 Q Mediation continue for approximately how
13 long?

14 A I -- I don't know.

15 Q Okay.

16 A We met on June one --

17 Q All right.

18 A -- 2023.

19 Q And, during the course of this with the
20 mediators Mr. Green, Mr. Fuad -- right -- and then
21 there was -- I'm missing -- Mr. Russo --

22 A Yes.

23 Q -- with those three guys. Would it be fair
24 to say that you had discussions -- that you learned
25 information without describing what the information was

1 -- from Beasley Allen and other members of the Talc
2 Claimants' Committee that was confidential?

3 A I suppose so, yeah.

4 Q And, did they learn some stuff from you that
5 was confidential?

6 A No --

7 Q Okay.

8 A -- it was just the tedium of structural
9 optimization and disaffiliation that the mediators
10 wanted to understand in detail.

11 Q Did the mediators advise you that -- or did
12 you already know that what you discussed, as Mr. Brody
13 has pointed out, in mediation is confidential?

14 A I'm sure they did.

15 Q And, did you ever violate that confidence?

16 A No.

17 Q Have you ever been accused of violating that
18 confidence?

19 A No, not that I'm aware of.

20 Q Mr. Brody asked a number of questions about
21 -- bear with me one second -- I apologize -- Jim, can
22 we agree that you have never -- have you ever served as
23 an expert witness for the plaintiffs?

24 A No, I have never.

25 Q Have you ever served as an expert for Beasley

1 Allen?

2 A No.

3 Q After leaving Sidley and then Faegre have you
4 ever been employed by Beasley Allen?

5 A No.

6 Q As far as your position once you formed
7 Legacy you have been accused of being a side switching
8 lawyer. Do you believe that you are a side switching
9 lawyer?

10 A No --

11 Q Why --

12 A -- I'm not practicing law for one thing.

13 Q -- and let me ask you the core question. At
14 Legacy are you working against J and J?

15 A No. Quite frankly I would say we're working
16 trying to help them to obtain finality -- to give them
17 an option to obtain finality.

18 Q Now, Mr. Brody's response to that as you
19 heard today during direct slash cross was that, "Well,
20 you are working against them because we would like the
21 \$9 billion not the \$19 billion number. So, here's my
22 question for you. Mr. Hass has said -- I believe you
23 said it on -- earlier on the first day that he wants a
24 fair and reasonable settlement for the plaintiffs so
25 they are not over compensated, not under compensated, a

1 fair and reasonable number. Did you hear that
2 testimony during the first day?

3 A I believe so.

4 Q So, is it fair to say that Mr. Haas wants
5 that result but he only wants it if the number is \$9
6 billion?

7 A I -- I don't know.

8 MR. BRODY: Sorry -- that's -- that's
9 argumentative and --

10 THE COURT: Well, I don't necessarily know if
11 he can -- if Mr. Conlan can put himself in -- in the
12 mind of Mr. Haas. So, to the extent there's an
13 objection I don't want Mr. Conlan to speculate. So,
14 why don't you rephrase the question?

15 MR. POLLOCK: Yeah, I'll be glad to.

16 MR. BRODY: So, for the record Your Honor
17 I'll add a foundation objection to that.

18 THE COURT: Okay.

19 MR. BRODY: Thank you.

20 MR. POLLOCK: Bear with me one second here,
21 I'm moving quickly.

22 BY MR. POLLOCK

23 Q Once -- if -- if Legacy were to -- if J and J
24 were to say, "You know what? I'm going to go ahead and
25 sell these liabilities or transfer these liabilities to

1 Legacy," -- so I want you to assume that has happened.

2 Understand my question? Let's assume that's happened.

3 Do you believe that your interest and the Talc

4 Claimants' Committee's interest are aligned at that

5 point? Do you have the same interest?

6 A No, we would be opposed.

7 Q And, why would you be opposed?

8 A Because our economics at Legacy having acquired

9 the talc liable entities -- and it's not -- it's not

10 acquiring the liabilities. It's acquiring talc liable

11 entities. I don't mean to be particular about that but

12 it's important. We're acquiring the boxes themselves

13 that are liable in the tort system or contractually.

14 Once we own those entities our objective is to

15 hold onto the cash as long as possible, to make that

16 spread 1.6 percent in a perfectly matched structure.

17 And, we certainly don't want to pay people who can't

18 take it from us. Judgement, settlement. Just like any

19 other mass tort defendant would look at it.

20 Q The -- the words that J and J have used at

21 times during Mr. Haas's and Mr. Murdica's questioning

22 was that the conversations that you had with Mr.

23 Birchfield and with Beasley Allen were inherently

24 imbued with confidential information. That it's, "In

25 your neurons," I think is Mr. -- Mr. Murdica's words.

1 That you -- you -- you could not have ever kept that
2 information separate and apart.

3 What you learned from your time period at J and J
4 and what you discussed with Beasley Allen. Do you
5 agree that it -- your conversations were ever
6 inherently imbued with or that you -- that it was in
7 your neurons and you had to have divulged that
8 information.

9 A No, I do not agree that I was imbued or that my
10 neurons were imbued.

11 Q So, there's a point in time where Mr. Murdica
12 writes you a nastygram (phonetic). Let me find it here
13 real quickly. It's on Barnes and Thornburg letterhead
14 and I think it's exhibit six. Yeah, it's exhibit six.
15 So, he writes a letter and he says -- and can you pull
16 that up so you can have it in front of you sir?

17 A Okay. I have it.

18 Q And, he says in the last paragraph on the
19 first page, "You learned highly privileged information
20 about J and J and L.T.L. Strategies from the attorney
21 client relationship." Do you see that?

22 A I do.

23 Q Now, LTL-1 and then LTL-2 as you've testified
24 on direct from Mr. Brody worked -- did not work
25 effectively for J and J, correct?

1 A Correct.

2 Q And, the Bankruptcy Court disagreed with J
3 and J that that was a valid approach, right?

4 A Well, yes. I mean -- what's called LTL-1 it was
5 the Third Circuit that said cannot stay in bankruptcy,
6 not a good faith filing. And then ultimately Judge
7 Kaplan (phonetic) executes by dismissing. L.T.L. files
8 again. It's called LTL-2 somewhere around April 2023.
9 And, on July 28th, 2023 Judge Kaplan dismisses again on
10 the grounds that they're not distressed.

11 Q And, you responded -- other than learning
12 about L.T.L. which is what he seems to be complaining
13 about here -- I'm going to read it -- the whole
14 paragraph. "You learned highly privileged -- highly
15 privileged information about J and J and L.T.L.'s
16 strategies from the attorney client relationship. And,
17 while publically disparaging your own strategies," let
18 me stop there. Was that your own strategy to file
19 L.T.L.?

20 MR. BRODY: I -- I'm going to object on
21 privilege grounds based on what his -- his strategies
22 were or were not while he was outside Counsel to the
23 company.

24 MR. POLLOCK: Well, Your Honor, let me
25 rephrase it if you don't mind.

1 THE COURT: Well -- sure.

2 BY MR. POLLOCK.

3 Q Did you ever propose to J and J that they
4 file something like L.T.L.?

5 MR. BRODY: Same objection Your Honor.

6 MR. POLLOCK: They've accused him of it.

7 They've testified to it. But -- if -- if he wants to
8 -- if he wants to object I will stand on the objection
9 and note that the record is now devoid of that fact.

10 THE COURT: Okay.

11 BY MR. POLLOCK

12 Q Did you respond to --- Mr. Murdica's letter?

13 A I did.

14 Q And, did you respond on or about November 5,
15 2023 and tell him -- and what did you say in that
16 letter?

17 MR. BRODY: The response contains privileged
18 information of Johnson and Johnson Your Honor. We
19 object to reading the response. I mean, it's -- I -- I
20 assume it could probably be redacted in some form or
21 another. But, it -- it hasn't been and not knowing
22 what he's going to say, I have to object.

23 THE COURT: Hold -- hold that thought. Let's
24 go back and revisit Mr. Murdica's letter to Mr. Conlan.
25 And, his -- the letter to Mr. Conlan from Mr. Murdica

1 was that you're criticizing your own strategy. I
2 sustained that objection. I'm reconsidering. I'm not
3 sustaining that -- I'm not sustaining that objection.
4 I'm overruling that objection because it's in the
5 letter from Mr. Murdica.

6 MR. POLLOCK: Yes sir.

7 THE COURT: So, you can ask that question
8 again. And, hold that question -- that objection sir
9 -- Mr. Brody, okay? It's revealed in the letter. So,
10 to the extent there was an attorney client privilege
11 that's deemed waived by Mr. Murdica.

12 BY MR. POLLOCK

13 Q So, Mr. Conlan, I'm going to try again. With
14 regard to exhibit six -- I'm going to ask the simple
15 question, did you propose the -- what became L.T.L. to
16 Johnson and Johnson?

17 A Did I propose the (indiscernible)

18 Q Yes.

19 A Am I able to answer that?

20 THE COURT: Yes, you are.

21 A No.

22 Q Okay. Mr. Murdica --

23 A To be -- to be clear, we talked about all of the
24 options.

25 Q (indiscernible)

1 A I think your question is did I recommend that
2 option above others.

3 Q Did you recommend it at all?

4 A I -- there were options, they had pros and cons.

5 Q Okay. So, you discussed it --

6 A There were certainly ones that I thought were
7 better than others.

8 Q Fair enough sir. Mr. Murdica claims that you
9 breached a confidence. Did you write back to him on
10 November 5, 2023 and advise that you had not breached a
11 confidence?

12 MR. BRODY: I'll let him -- I mean, yes or no
13 to that will not implicate privilege. So -- but I just
14 object to going beyond that.

15 THE COURT: But he's -- Mr. Conlan's being
16 accused of breaching that confidence. So, I'm going to
17 permit Mr. Conlan to answer yes or no.

18 MR. BRODY: Yeah. And that's -- that's why I
19 said -- no objection to a yes or not answer there Your
20 Honor.

21 THE COURT: Okay.

22 BY MR. POLLOCK

23 A I -- I did object to that.

24 Q And, did you disagree with him?

25 A Yes.

1 Q And, did he ever write back to you and say,
2 "No. Here's all the reasons why you broached a
3 confidence," or in fact, "Here's the proof you broached
4 a confidence," or, "The fact is that since you broached
5 this confidence you should be ashamed of yourself?"
6 Anything of that nature?

7 A No. We did have brief communication about trying
8 to get together but it was non substantive.

9 Q If you could go to exhibit four please? And,
10 what I want to do is start at the end. So, that would
11 be plenary hearing 26. Let me know when you're ready.

12 A Okay. I'm there.

13 Q You good to go?

14 A Yes.

15 Q Excellent. So, the first one is Doug
16 Dachille (phonetic) to Robert Huffins (phonetic) and
17 Duane Van Arsdale and Jim Conlan. Do you see that?

18 A I do.

19 Q And, it says, "Thank you for the
20 introduction," right?

21 A Yes.

22 Q And, the introduction -- what did you
23 understand the introduction to be?

24 A Mr. Huffins wrote to Mr. Van Arsdale saying, "You
25 ought to meet with these guys."

1 Q And, if you look at the next document above
2 -- because -- you know -- emails go reverse so you have
3 to start from the end, that's why I'm starting from the
4 end.

5 A Understood.

6 Q So, at -- the next one is August 21, Duane
7 Van Arsdale to Doug Dachille, Erik Haas, Jim Conlan,
8 Andrew White, do you see that?

9 A I do.

10 Q And, it says, "Thanks for the note and nice
11 to meet you as well. I have copied Erik Haas and
12 Andrew White who will -- will also join the
13 discussion." And then it goes on from there. Was the
14 discussion a discussion between Legacy and J and J?

15 A Yes.

16 Q And, was it -- the discussion as you
17 understood it going to be about the Legacy Liability
18 Solutions proposal?

19 A Yes.

20 Q And, did alarm bells go off at that point in
21 time? Were there threats and sanctions and criticism
22 and claims and anything like we're seeing today that
23 you as Legacy Liability Solutions were reaching out to
24 J and J?

25 A Not at all. And, Mr. Dachille is not a lawyer and

1 he's the chief investment officer of Legacy and he was
2 essentially one of the primary movers here. There was
3 no request for a confidentiality agreement and there
4 was no objection.

5 Q And, at this point was it -- did you believe
6 it was clear to everyone you and your colleague was
7 there and solely and exclusively for Legacy Liability
8 Solutions, you were not there for -- as a J and J
9 representative?

10 A I was not there for --

11 Q That you had your own -- that Legacy
12 Liability Solutions has its goal and J and J has its
13 goal?

14 A Yes.

15 Q And, your hope was that if you could sell,
16 promote the Legacy Liability Solutions you would make
17 money, J and J would get it off its balance sheets,
18 everybody would walk away happy, is that the idea?

19 A Yes.

20 Q But, you were completely -- no one complained
21 at that point in time, to be clear, that you were now
22 having been a former Faegre lawyer, you were now
23 working on behalf of Legacy Liability Solutions selling
24 a proposal to J and J?

25 A No one complained.

1 Q All right. And, Mr. Haas knew about that?

2 A Yes.

3 Q At the top -- I'm going to skip forward to
4 plenary 23. Everyone's been asked about this one so I
5 don't want you to feel excluded. So, it's Wednesday
6 October 18, 2023, Jim Conlan to Van Arsdale, Doug
7 Dachille, Erik Haas and Andrew White and Doug something
8 -- I can't read it --

9 A Dachille?

10 Q Yeah, it is -- it's -- my copy is crossed
11 out, apologize. So, Doug Dachille. It says that,
12 "Andrew Birchfield, Doug Dachille and I are prepared to
13 meet with you." It's the last -- the penultimate
14 paragraph there. Do you see that?

15 A I do.

16 Q Did you ever tell -- did you believe at that
17 point in time when you wrote this letter -- this email
18 that you and Andy were conspiring under the cover of
19 darkness about how to come up with a proposal that
20 would take -- would destroy J and J's approach?

21 A No. The -- the opposite. If you go back to the
22 -- the message that is directly below it --

23 Q Yes sir.

24 A -- or before it would be the other way to describe
25 it, it's the message from Mr. Van Arsdale to which this

1 is a response. In the message from Mr. Van Arsdale
2 dated October 6, 2023, 12:43 p.m. he says, "Hi Doug and
3 Jim, thank you for the follow up note to our discussion
4 a few weeks ago. To close the loop we have discussed
5 both internally," and this is the big language, "And
6 with our auditors and at this time we do not have an
7 interest in pursuing this strategy.

8 While unlikely, we will let you know if this
9 perspective changes in the future. Thanks again for
10 your time and thoughts." We looked at that language,
11 particularly the auditors, and thought to ourselves and
12 discussed it that J and J because they said it and Mr.
13 Haas testified to it, actually had discussed this with
14 Price, Waterhouse Coopers.

15 And, we thought either Price Waterhouse Coopers
16 didn't understand correctly or it wasn't conveyed
17 correctly because it didn't make any sense to suggest
18 that the auditors were saying it couldn't be done.
19 What did make sense to us is that the auditors were
20 saying, "It's going to be tricky, it could be a high
21 number, it could be a big range." And so, the follow
22 on email is to say, "We think we can help you with the
23 range, we think we can help you with your auditors."

24 Q So, if I -- if I -- if I look at that one and
25 I look at exhibit seven -- and I don't even

1 (indiscernible) put your fingers in both places. But,
2 exhibit seven is going back to the Legacy proposal of
3 November nine.

4 A Yes.

5 Q So, you've got a proposal from Legacy and
6 you've got this matrix at the end on the last page?

7 A Yes.

8 Q Would you agree with my characterization that
9 this is like peanut butter and chocolate? They're good
10 together but they're two different things, meaning that
11 it was the Legacy proposal for the first several pages.
12 It is the matrix which is the Beasley Allen proposal --
13 let me stop there. Would you agree with that
14 characterization?

15 A I would agree with it. And, just to be -- put a
16 fine point on it, the Legacy proposal isn't dependent
17 on agreeing with Beasley Allen or dependent on having
18 that kind of a settlement. It's just a data point for
19 the auditors to look at. We would have gone forward
20 provided all of the other numbers worked without any
21 agreement from -- the lawyers at Beasley Allen or the
22 plaintiffs' lawyers generally.

23 The whole point -- if there's a single point I'd
24 like to convey is; companies beat their heads against
25 the wall trying to get the claimants to agree by 75

1 percent plus and they often fail. The beauty of this
2 structure is it doesn't require the plaintiffs' lawyers
3 to vote or agree at all.

4 It does require the auditors to come up with a
5 number. It does require the company to agree. So, it
6 -- it flips -- it flips it quite frankly and gives all
7 the power to the company.

8 Q As to the actual value on page one which is
9 plenary exhibit 62 it says, "19 billion or such greater
10 amount is determined." Do you see that?

11 A I do.

12 Q So, that is not a determination that Beasley
13 Allen makes, correct?

14 A No.

15 Q So, they have a -- they have a proposed
16 structure at the end of whatever this thing is on page
17 67. But, that is not a Legacy Liabilities document,
18 correct?

19 A Correct. And, at least what we understand this to
20 be, the matrix, is it's only current ovarian cancer
21 claimants. It's not mesothelioma claimants. It's not
22 attorney general claimants. It -- it -- it's not
23 future mesothelioma claimants or future ovarian cancer
24 claimants.

25 All components of those are captured by Legacy's

1 acquisition of the talc liable entities. And, when we
2 come up with a number at Legacy of 19 we're looking at
3 that number and how much it will grow and how that
4 growth will match against the claims. It's sort of
5 like an insurance company.

6 Q You hear some testimony during Mr. Haas's
7 testimony on day one and Mr. Murdica's testimony on the
8 same -- in the afternoon that, at page 56 from Mr.
9 Haas, it was egregious that Jim was communicating with
10 Talc Claimants' Committee and Andy. Mr. Haas says, "It
11 was -- the first time was October 18, 2023." The -- he
12 also then says he was shocked.

13 This was page 53 to 54 of the transcript. If you
14 want to see it I can show it to you. Mr. Murdica then
15 parrots the language, "Shocked and appalled," page 238.
16 The -- at any point in time did you ever disclose a
17 single J and J confidence to Andy Birchfield?

18 A Absolutely not.

19 Q What -- the -- as far as what you knew from
20 your work at Faegre on behalf of J and J, is that at
21 all relevant other than that they're related because
22 they all involve talc somehow, was it related at all to
23 your proposal for Legacy today?

24 A No. There is nothing in our proposal -- which by
25 the way would be different today because factors have

1 moved around including interest rates, some claims have
2 been settled. What is required for the Legacy proposal
3 has nothing to do with any confidential information
4 I've obtained.

5 In fact, this structure -- this type of proposal
6 has been made to lots of companies about whom I don't
7 have any confidential information. It's the same
8 structure.

9 Q And, if we go to the document of February 2,
10 2023 which is the document that closes with the
11 language Mr. Brody's asked you about multiple times.
12 And I'll -- to give him credit he points out, "This is
13 a proposal for agreement between Legacy Liability
14 Solutions and Johnson and Johnson. Legacy and J and J
15 will agree as follows."

16 As Mr. Brody has noted it has six points. The
17 sixth point is, "Legacy reserves the right in its
18 discretion to negotiate settlements with interest
19 (indiscernible) plaintiff law firms of some or all
20 pending claims filed by such firms. All such
21 settlements to become effective at closing." You've
22 seen that sentence before, correct?

23 A Yes.

24 Q Did Mr. Haas or Mr. Duato ever write back to
25 you and say, "You can't do that, you're a former J and

1 J lawyer. We own you, you were at Faegre?" Did they
2 ever complain to you?

3 A No.

4 Q With regard to the -- bear with me one second
5 -- there was no objection I think to exhibit four -- to
6 -- do I -- is that -- can we admit that in evidence? I
7 can deal with it later on as a housekeeping matter if
8 you want me to.

9 MR. BRODY: Which was exhibit four?

10 MR. POLLOCK: Okay. We'll deal with it
11 later. I can't remember sir. I'll go back to it.
12 Judge, if you could, I -- I think I may actually be
13 done. Can you give me three minutes just to talk to my
14 client and confirm my notes?

15 THE COURT: Sure.

16 MR. POLLOCK: I promised to keep it brief and
17 I'm trying to do so. Okay.

18 THE COURT: We'll stay on the record.

19 MR. POLLOCK: I apologize --

20 THE COURT: It's okay.

21 * * * *

22 MR. POLLOCK: Your Honors, I have no further
23 questions of Mr. Conlan.

24 THE COURT: Thank you. Judge Singh, do you
25 have any questions?

1 JUDGE SINGH: (indiscernible)

2 THE COURT: I -- I have a couple questions.

3 VOIR DIRE BY THE COURT:

4 Q After the quarterly call Mr. Conlan, the J
5 and J stock went down, what -- what dollar value?

6 A Yeah. It wasn't the quarterly call Your Honor.

7 | It was on January 30, 2020 --

8 Q Oh, after Ambrose -- Judge Ambrose's
9 decision.

10 A Correct.

11 Q Right.

12 A So, that day Judge Ambrose, the Third Circuit
13 issued its opinion and when it issued its opinion the
14 value of all of J and J stock, which I refer to as its
15 market cap, declined \$18 billion that day. It bounced
16 around some but it declined substantially.

17 Q And, Legacy got its total value for a
18 possible settlement from that market move?

19 A That was one of the important market elements,
20 other interest rates.

21 Q And, other interest rates. Now, if -- when
22 -- when you testified -- when Mr. Brody was questioning
23 you, you testified you were involved in several team
24 meetings and all hands meetings. And, your focus was
25 on the bankruptcy.

1 A Yes.

2 Q And, other aspects about the valuation -- the
3 tort valuation may have been discussed, probably was
4 discussed but you didn't really focus on it because
5 that wasn't your area?

6 A Not my area. However, I would add when J and J
7 filed and it became public the Bolton settlement offer,
8 that was 4.2. So, I and everyone was aware of that.

9 Q Now, you had said though -- but going back
10 your focus was on the bankruptcy --

11 A Right.

12 Q -- and restructuring, etcetera. When you go
13 to Legacy you then become involved in the tort
14 analysis, right? So, what happened from when you were
15 with Faegre looking at the bankruptcy and the
16 structuring, the -- Imerys bankruptcy, you didn't focus
17 in on the tort liability valuation but at Legacy you
18 did. How -- where did that change come from?

19 A Yeah. So, Legacy is comprised of a lot of people.
20 One of the people is sitting in the courtroom back
21 there John Gasperovich (phonetic) -- Mr. Gasperovich
22 could you raise your arm? Mr. Gasperovich for example
23 was the general Counsel of five companies, two public
24 companies. One of those was Borg Warner -- just going
25 to (indiscernible) out there. Borg Warner was

1 afflicted by an asbestos problem as you may recall.

2 I think everybody knows that. While Mr.
3 Gaspervich was the general Counsel he wanted to cabin,
4 contain that asbestos liability so that it wouldn't eat
5 the entire company. And so, I structurally optimized
6 Borg Warner while I was -- while Mr. Gaspervich was the
7 general Counsel.

8 Some years later those entities called -- we -- we
9 named them Morris Tech were disaffiliated in a sale to
10 Instar (phonetic). Mr. Gaspervich brings that
11 expertise to Legacy. Scott Gilbert (phonetic) a very
12 prominent insurance and insurance restructuring lawyer
13 joins Legacy.

14 He brings that dimension to it. Doug Dachille is
15 the CIO of Legacy. He's formerly the CIO of AIG and in
16 his prior life the hedge fund he created which was
17 merged into AIG he managed \$8 billion worth of the
18 asbestos liabilities of the so called 524G trust of
19 prior bankruptcy proceedings.

20 And so, all of those elements were brought
21 together to create Legacy. What do I bring? I bring
22 the -- the expertise of a bankruptcy lawyer who was
23 watched companies struggle, often ineffectively, to try
24 to get the plaintiffs' lawyers to agree by 75 percent
25 plus in number to a solution that will resolve their

1 current and future liabilities.

2 And, my view after it all, there had to be a
3 better way, another way that wouldn't hand so much
4 power to the plaintiffs' lawyers and give the company
5 what it frankly needs and deserves which is an option
6 that allows it to say, "I can get rid of current and
7 future liabilities without having to go to the
8 bankruptcy Court, without having to beg the plaintiffs'
9 lawyers, and I just -- I have to agree to the amount
10 and I have to get my auditors to agree." So, it
11 becomes a transaction, not a litigation.

12 Q So, the settlement authority is then
13 hypothetically not with the company, in this case J and
14 J, all settlement authority rests with Legacy? Is that
15 how this structure is?

16 A Precisely. Precisely.

17 Q Did you notice, I was going to ask without 75
18 percent and without the involvement of J and J how do
19 you get the consent to settle? The structure is J and
20 J provides you with the authority to settle?

21 A Yes. They essentially are selling us the liable
22 entities --

23 Q And the authority?

24 A -- and the authority.

25 Q What happens if interest rates go down? You

1 have -- you know -- you have a one and a half percent
2 on top of the existing interest rate that you're making
3 money on. And, you said the tort liability goes down
4 proportionate to when the interest rates go up?

5 A Right.

6 Q What happens if the interest rates go down?

7 A Right. And, this is Mr. Dachille's department.
8 We make sure they're closely matched including duration
9 so that if interest rates go down which would result in
10 the liability going up the value of our portfolio will
11 also go up because we have matched double A corporates.

12 So, it's a no -- very, very low risk structure
13 like an insurance company so that the assets, the
14 double A corporates are tightly matched against the
15 liabilities. And, if they both move up, fine. If they
16 both move down, fine. But, you don't want one to move
17 up and the other to move down.

18 THE COURT: All right. Judge Singh?

19 JUDGE SINGH: (indiscernible)

20 THE COURT: Mr. Pollock, any questions before
21 I return to Mr. Brody based on the Court's questions?

22 MR. POLLOCK: No sir. No Your Honors, thank
23 you.

24 THE COURT: You're welcome. Mr. Brody?

25 MR. BRODY: All right. Thank you Your Honor.

1 And, I'll try to be brief so that we can keep moving
2 forward.

3 REDIRECT EXAMINATION BY MR. BRODY

4 Q So, Mr. Conlan, you were asked about Weil
5 Gotshal's role in the Imerys bankruptcy, you recall
6 those questions from Mr. Pollock?

7 A I do.

8 Q And, you frequently in the course of your
9 discussions with the in house team at J and J discussed
10 and addressed your views on Weil Gotshal's analysis,
11 didn't you?

12 A Yes.

13 Q And, you discussed with them your views on
14 Jones Day's analysis, right?

15 A I don't recall that. The -- for example -- or to
16 illustrate, in the Imerys North America bankruptcy
17 case, during the pendency of that I was part of the
18 team, if you will, the all hands team that would work
19 on what was happening there. I don't recall any such
20 effort during the L.T.L. case of which I was a part.

21 Q Okay. I'm -- I'm -- and -- and maybe my
22 question was -- was a little imprecise.

23 A Okay.

24 Q But, you said, "Well, the L.T.L. bankruptcy,
25 that was Jones Day." You discussed your views on the

1 Texas two step with in house Counsel at J and J,
2 correct?

3 A I discussed my views of what Jones Day was doing
4 in North Carolina and the pros and cons of it and what
5 they had to achieve, what the risks were before L.T.L..

6 Q Right. The -- you discussed the -- the risks
7 and -- and benefits to J and J in a privileged and
8 confidential setting, correct?

9 A Yes.

10 Q All right. You indicated that whether the
11 structural optimization and disaffiliation approach
12 works depends on the amount, right?

13 A Yeah, particularly the auditor.

14 Q Right. Exactly because you said you -- you
15 have to get the auditors on board with the amount or
16 it's not going to work, you're going to be --

17 A Correct.

18 Q -- you know -- potentially at risk for
19 something like a fraudulent transfer allocation?

20 A We -- two things. One, we just wouldn't do. And,
21 number two, the company wouldn't either because it
22 wouldn't remove the non cash charge.

23 Q And, the -- so whether the number works
24 depends on whether you -- you -- you know -- drilled
25 down and -- and gotten to a number that is big enough,

1 right?

2 A Are you talking about the auditors?

3 Q I'm talking about whether -- whether a
4 structural optimization and disaffiliation is going to
5 successfully resolve liabilities is ultimately going to
6 depend on whether that number that is used to
7 capitalize the disaffiliated entity is high enough?

8 A Well, it's resolved for the -- for the company no
9 matter what because once the auditors remove the non
10 cash charge --

11 Q But, it's not -- it's -- but it's not
12 resolved if the auditor won't do that, that's your
13 testimony, right?

14 A Correct. That's correct.

15 Q And so, you have to have a number that is
16 going to reflect things like -- and you listed some of
17 them in response to Mr. Pollock's question -- futures,
18 values of current claims in the talc context, whether
19 it's ovarian or ovarian plus the -- the mesothelioma
20 claims. All of that is going to have to get wrapped up
21 in it, right?

22 A All of those things would be taken into account by
23 the auditors.

24 Q Right. Exactly. And, by the way, Beasley
25 Allen was okay with the \$19 billion number? You shared

1 that with them before you sent the letter to the board
2 of directors, right?

3 A I didn't ask them if they were okay with it. We
4 didn't need their vote.

5 Q They were okay -- well you told J and J that
6 they were okay with the proposal, right?

7 MR. POLLOCK: Objection.

8 MR. BRODY: In your letter, you told -- you
9 told --

10 THE COURT: Based on the letter the --
11 BY MR. BRODY:

12 Q -- you told the board of directors on
13 November 9th, 2023 that your proposal had the support
14 of outside Counsel?

15 MR. POLLOCK: Your Honor, the document says
16 what it says. That's the best evidence. It says, "\$19
17 billion (indiscernible) as justified by J and J's
18 auditors." So, to me the -- if we're going to get into
19 this language again it has to be precise.

20 THE COURT: Right. What's the exhibit Mr.
21 Brody, you're referring to?

22 MR. BRODY: It's hearing exhibit seven.
23 BY MR. BRODY

24 Q Let me ask you --

25 THE COURT: So, second paragraph?

1 MR. BRODY: Yeah. Let me -- yeah. First and
2 second.

3 THE WITNESS: I think I can answer it.

4 BY MR. BRODY:

5 Q Well, let me ask you a different question
6 since we're now a little bit back and forth beyond it.
7 The -- the factors that you were talking about that
8 have to go into a number -- right -- analysis of the
9 value of claims is -- is certainly going to be
10 something that you would expect an auditor might be
11 interested in, fair?

12 A I think that's one of the factors, given my
13 experience, auditors look at.

14 Q Right. Or if -- if the -- if it were the
15 case, damages analysis, something like that?

16 A It is one of the factors the auditors would look
17 at.

18 Q Yeah --

19 A Settlements.

20 Q -- anticipated incidents of future claims?

21 A That's one of the factors the auditors would look
22 at.

23 Q Right. And, Beasley Allen shared its
24 confidential work product on those very topics with you
25 last year, didn't they?

1 A Beasley Allen did share some privileged
2 information with some of the people in Legacy.

3 Q Yeah. Including you?

4 A I -- I don't recall receiving it. But, I -- but I
5 can tell you this. You asked the question whether they
6 were okay -- they were okay with structural
7 optimization and disaffiliation, not that we needed
8 them to be okay. Because we don't need the yes vote.
9 That's the whole point.

10 On the second question, the 19 billion or such
11 greater amount as the auditors require has to cover
12 everything. It has to cover current and future meso.
13 It has to cover current and future ovarian. It has to
14 cover attorney general costs. It has to cover defense
15 costs. All of those things have to be included.

16 Q And so -- so -- so Beasley Allen shared all
17 of that -- all of that information -- I mean, you don't
18 recall specifically what you looked at and when but you
19 do recall that Beasley Allen shared its privileged and
20 confidential work product on things like claim values,
21 damages, futures with Legacy, right?

22 MR. POLLOCK: Objection Your Honor. We're
23 talking about mediation confidential information, how
24 can he answer that question?

25 THE COURT: I don't know that was covered in

1 the -- in the mediation. Is that a topic that's
2 covered in mediation?

3 MR. BRODY: It's -- it's -- I'm -- it's
4 straight from the privilege log. It's been supplied to
5 us.

6 MR. POLLOCK: The mediation privilege log.
7 He's asking about the merits and the substance of the
8 mediation privilege log.

9 MR. BRODY: I'm -- I'm simply asking whether
10 that was provided to -- by Beasley Allen to Legacy.

11 MR. POLLOCK: He is not. He's asking about
12 the details that was discussed that Judge Snyder
13 sitting behind me --

14 THE COURT: I'll sustain the objection.
15 Yeah.

16 MR. BRODY: All right. I'll -- I'll make it
17 clearer.

18 BY MR. BRODY

19 Q That -- that was provided to -- that
20 information was provided to you, without getting into
21 the substance of it?

22 THE COURT: Judge Singh has a question.

23 JUDGE SINGH: (indiscernible)

24 THE COURT: Well --

25 JUDGE SINGH: Okay. Yeah, if you don't mind

1 I just want to go back to the line of questioning about
2 your -- your testimony that you didn't need the consent
3 of Beasley Allen or other plaintiffs. If we turn to
4 exhibit seven on page two it's labeled plenary hearing
5 63, the second paragraph under details of proposal --

6 THE WITNESS: I'm -- I'm sorry -- I'm sorry
7 Your Honor. Exhibit seven?

8 JUDGE SINGH: Yes. I'm sorry. I'm going
9 fast.

10 THE WITNESS: Okay. I'm on exhibit seven
11 now, sorry.

12 JUDGE SINGH: Okay. And, the second
13 paragraph under details of proposal it says, "To
14 provide enhanced certainty to P.W.C. in its
15 determination. It is important to note that leading
16 Counsel in the M.D.L. have agreed to support an opt in
17 settlement with Legacy," et cetera. Do you see that
18 language?

19 THE WITNESS: I do, yeah.

20 JUDGE SINGH: So -- so what was the important
21 piece of this? Why is that important to P.W.C.?

22 THE WITNESS: Yeah. So, when the auditor
23 P.W.C. is looking at how much money has to be in the
24 talc liable entities for them to remove the non cash
25 charge -- because they don't like removing it. They're

1 a conservative group of people. But, to remove it they
2 want to have all of the data that will help them assess
3 the range of potential liabilities.

4 And, frankly, they want to make sure there's
5 enough liability to meet the high end of the range
6 because they don't want to be criticized later if it
7 were to turn out that there's not enough money. And
8 so, the potential of settlements, even if they're just
9 potential, is an important data point. The \$8.9
10 billion settlement which didn't garner enough support
11 -- support would be relevant also. The fact that that
12 many people were willing to support that is an
13 important data point.

14 JUDGE SINGH: But here this references an
15 agreement that there's -- leading Counsel in the M.D.L.
16 have agreed. So, there's something more than just a
17 data point in terms of what had been negotiated
18 previously, is that correct?

19 THE WITNESS: Yeah -- yes. So, the -- the
20 concept from Beasley Allen was its belief or you could
21 say its agreement that it would support -- not that it
22 could deliver -- but that it would support something
23 like this. It wasn't -- they didn't have the
24 authority, we didn't have the authority to enter into
25 the agreement.

1 But, an auditor in saying, "Is it this big or
2 is it this big," in coming up and -- frankly taking off
3 the high end of the range which hopefully they would do
4 and lower it down to this, all of the potentials for
5 resolution help them take the high end of the range
6 off. Again, it's not a settlement. We're just taking
7 the liable entities and they're agreeing that the
8 liable entities have enough funds in them that J and J
9 can be removed from the picture.

10 JUDGE SINGH: Okay. Thank you.

11 BY MR. BRODY

12 Q And so, post bankruptcy, post mediation, you
13 were having discussion I think as you testified with
14 Mr. Birchfield about the settlement matrix that I think
15 you said is -- is his settlement matrix that was
16 attached to your letter to the J and J board, right?

17 A Yes.

18 Q Right. And, this was after -- I think you --
19 you said that they had previously -- Beasley Allen had
20 previously sent you related privileged and confidential
21 work product, right?

22 A Sent people at Legacy privileged information.

23 Q Right. And, even after the mediation ended
24 as you were having these discussions with Mr.
25 Birchfield -- I mean you were asked about J and J not

1 raising an objection when you reached out to Mr. Van
2 Arsdale or when he wrote back and included you on an
3 email that was dated August 21st of last year, you
4 remember that right?

5 A Could you draw me to this?

6 Q It's part of hearing exhibit four.

7 A Okay.

8 Q Mr. Pollock asked you, "Well did J and J --
9 you know -- raise any alarm bells," --

10 A Yes. I'm sorry. Yes.

11 Q -- "Or say you -- you -- you know --
12 no, we don't want you talking about structural
13 optimization?"

14 A Correct.

15 Q Right. But, you didn't tell them you were
16 working with Mr. Birchfield, did you?

17 A I didn't call it to their attention, no.

18 Q Right. And, when you went in and you met
19 with them on September 11th you didn't tell them you
20 were working with Mr. Birchfield at that time either,
21 did you?

22 A I did not call it to their attention, no.

23 Q And, it was only -- it was only on October
24 18th that you did that, right?

25 A Correct.

1 Q Right. And, during that time period that's
2 when you were having the discussions with Mr.
3 Birchfield and Beasley Allen about the settlement
4 matrix and what kind of support are we going to get for
5 a settlement matrix so that I can represent to Johnson
6 and Johnson that I have this support and that I'm
7 confident that I'm going to get the support, right?

8 A There's two components. One is it's helping us
9 assess whether we want to take this and at what price.
10 And, number two, it's helping the auditors take the
11 high end of the range off in coming up with the number
12 at which they'll remove the non cash charge. Neither
13 happens unless J and J says -- sorry -- structural
14 optimization, disaffiliation don't happen unless J and
15 J says, "Yes," and the auditors agree and provide a
16 number, otherwise nothing goes anywhere.

17 Q And -- and my question was a little
18 different. My question was actually, you were during
19 this time period having discussions about the matrix
20 and whether you were going to get that 95 percent
21 support with Mr. Birchfield and Beasley Allen, correct?

22 A I -- I wouldn't call it discussions. Mr.
23 Birchfield said, "I think I could get 95 percent for
24 this." We -- we didn't negotiate it. We didn't -- it
25 was nothing like that.

1 Q And, this is -- is the matrix that has the
2 claim values, right?

3 A Yeah. For --

4 Q Right.

5 A -- what -- for what we understand to be current
6 ovarian cancer claimants. Not meso, not futures, not
7 the attorney general claims.

8 Q And -- and your testimony, if I understand
9 it, is that they shared their privilege and
10 confidential attorney work product with you, right?

11 A That's my understanding.

12 Q But you, when you were having your
13 discussions with them, walled off everything you
14 learned in 20 months representing Johnson and Johnson
15 in one part of your brain so that you wouldn't disclose
16 client confidences from the other part of your brain
17 when you were having discussions with Mr. Birchfield.

18 Is that -- is that your testimony?

19 A Correct.

20 MR. BRODY: Thank you. That's all I have.

21 THE COURT: Mr. Pollock?

22 RECROSS EXAMINATION BY MR. POLLOCK

23 Q One question. Everything you learned --
24 let's just pick on that last phrase. Tell me one
25 thing, whatever it is, that you learned while working

1 for J and J that was directly relevant -- that was
2 necessary for you to propose the Legacy Liability
3 solution? I'd like to know one thing --

4 MR. BRODY: That's -- I'm sure it might --

5 THE COURT: With the exception of attorney
6 client privilege.

7 MR. POLLOCK: Actually, Your Honor, I would
8 even include that. The fact is --

9 MR. BRODY: (indiscernible)

10 MR. POLLOCK: -- this is -- this -- this goes
11 to the significantly harmful element Your Honor. I
12 need to know. Tell me the one thing because right now
13 I'm seeing a lot of nothing. I'm seeing that --

14 THE COURT: Well, I'm permitting the -- the
15 -- what -- what's your -- any objection Mr. Brody?

16 MR. BRODY: Yeah. The objection is -- is
17 privilege -- you know -- tell me one thing you learned
18 that would be relevant to this and obviously what he
19 learned is privileged.

20 MR. POLLOCK: Let me take it by -- step by
21 step. How about this?

22 BY MR. POLLOCK

23 Q Is there anything -- just yes or no. Is
24 there anything that you learned while you were at J and
25 J that was absolutely necessary for you to perform your

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1 function as the CEO of Legacy making a proposal on
2 behalf of Legacy Liability Solutions? Just yes or no.

3 A No.

4 MR. POLLOCK: Excellent. I'm done.

5 THE COURT: Okay. We're going to continue.
6 I -- look to see if we're going to take a break. Mr.
7 Conlan, you can step down. We'll go a little bit
8 further. Mr. Brody (indiscernible) Mr. Birchfield come
9 up?

10 MR. BRODY: Yeah. I call Mr. Birchfield
11 unless the Court thinks it would be easier to take a
12 recess -- a short recess now and not interrupt the
13 flow?

14 THE COURT: No, I think -- play it by ear.
15 Thank you Mr. Conlan. Mr. Birchfield, please come
16 forward. Before you're seated Mr. Birchfield, please
17 raise your right hand, tell me your name and spell your
18 last name.

19 MR. BIRCHFIELD: Andy Birchfield, B-I-R-C-H
20 -F-I-E-L-D.

21 A N D Y B I R C H F I E L D, DEFENSE WITNESS, SWORN,

22 THE COURT: Thank you, you may be seated.

23 DIRECT EXAMINATION BY MR. BRODY

24 Q Mr. Birchfield, do you have a copy of the
25 hearing exhibits there with you?

1 A I do.

2 Q All right. Do you have anything else besides
3 the hearing exhibits there?

4 A I have my pen.

5 Q I just meant in the notebook. I -- that's
6 okay. I --

7 A I have --

8 Q -- whatever -- whatever you have in your coat
9 is -- it's all right.

10 A Notes on some times.

11 Q Okay. Notes for today?

12 A Yes.

13 Q All right (indiscernible)

14 A I mean, just if -- if I get into dates I have some
15 notes.

16 Q If you refer to your notes we'll -- we'll --
17 we'll talk about them, all right?

18 A Okay.

19 Q All right. You new in 2020 that James Conlan
20 was representing Johnson and Johnson in the talc
21 matters, correct?

22 A I knew -- I knew that Mr. Murdica had told me that
23 Jim Conlan was working -- he was working with -- he was
24 having dinner with at a ski resort with the F.C.R.s
25 pertaining to the Imerys -- the Imerys proposal that we

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1 were working together on -- that Mr. Murdica and I were
2 working together on. I knew -- I knew from Mr. Murdica
3 that extent but that was it.

4 Q Right. And so, you understood that Mr.
5 Conlan was acting on behalf of J and J, correct?

6 MR. POLLOCK: Just to be clear, this is --
7 can I get a time -- a point in time? Because I -- I
8 need to know when he's working on what.

9 THE COURT: Sure. Mr. Brody?

10 MR. BRODY: The question -- the question was
11 in 2020.

12 MR. POLLOCK: 2020.

13 THE WITNESS: In 2020 Mr. Murdica and I had
14 made a proposal to the -- to the Imerys T.C.C. And,
15 part of that proposal was dependent on the F.C.R.
16 support. And so Mr. Murdica told me -- that was the
17 extent -- Mr. Murdica told me that -- that Mr. Conlan
18 was at a conference -- a bankruptcy conference. They
19 were -- he would be skiing and having dinner with the
20 F.C.R., F.C.R.'s Counsel to -- to try to gain support
21 for that proposal.

22 BY MR. BRODY:

23 Q Okay. And I guess Counsel for Beasley Allen
24 is going to update their chart in real time during my
25 examination?

1 MR. POLLOCK: I -- I can do it later on.

2 I'll do it later. That's fine. I apologize. I'll do
3 it later.

4 MR. BRODY: I -- I don't know how they want
5 to do this. But --

6 THE COURT: Well, it's not -- it's not in
7 evidence. So -- but you can continue Mr. Brody.

8 MR. BRODY: Thank you.

9 BY MR. BRODY:

10 Q And -- and again, just so the record is clear
11 Mr. Birchfield, you knew that Mr. Conlan was acting on
12 behalf of J and J at the time, correct?

13 A I knew what Mr. Murdica had told me.

14 Q All right. And, that's what Mr. Murdica told
15 you, right?

16 A Yeah.

17 Q All right. Mr. Conlan was at the Faegre
18 Drinker Law Firm at the time, right?

19 A That's what I've heard today. And --

20 Q Yeah. And -- and you knew that Faegre
21 Drinker was lead Counsel for J and J in the M.D.L. in
22 Trenton, correct?

23 A I -- I knew Ms. Sharko was lead Counsel in the
24 M.D.L. and that she was with Faegre.

25 Q And that she was also lead Counsel here in

1 Atlantic City, correct?

2 A Yes.

3 Q All right. And, in 2020 the cases that were
4 pending against Johnson and Johnson both here in
5 Atlantic City and in Trenton were active, correct?

6 A Were active? I'm sorry?

7 Q Yes. Active.

8 A Yes.

9 Q Because that was before the bankruptcy stay
10 that followed the L.T.L. petition filing in October of
11 2021, right?

12 A Yes.

13 Q And, 2021 was when you proposed to J and J
14 through Mr. Murdica to settle all ovarian cancer talc
15 claims current and future through the Imerys bankruptcy
16 for \$3.25 billion, correct?

17 A No.

18 Q All right. Do you recall giving a deposition
19 in April of last year Mr. Birchfield?

20 A I do.

21 MR. BRODY: If I may approach to hand him a
22 copy of it?

23 THE COURT: Could you share it with Mr.
24 Pollock first?

25 MR. BRODY: Of course.

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1 MR. POLLOCK: I thought it was plenary
2 exhibit 29. Isn't -- are we talking about a different
3 -- I --

4 MR. BRODY: This is -- that's got the whole
5 thing here.

6 MR. POLLOCK: Okay. I -- I object to using
7 -- I've got -- they had the document, they produced the
8 records, they picked what they wanted. They have
9 exhibit five. I don't know why we're going beyond the
10 exhibits in (indiscernible) the record. I don't know
11 how I'm supposed to prepare this, read it on the fly --

12 THE COURT: Well --

13 MR. BRODY: It's impeachment Your Honor.
14 It's --

15 THE COURT: -- well, go ahead.

16 MR. BRODY: Thank you. May I approach?

17 THE COURT: You may.

18 MR. BRODY: And would the Court like a copy?

19 BY MR. BRODY

20 Q Mr. Birchfield, I've handed you a copy of the
21 transcript of your deposition from April 17th, 2023.
22 Do you have that?

23 A I do.

24 Q If you would turn to page 65, line 24? Are
25 you there?

1 A Yes.

2 Q And, it carries over to the next page. If
3 you could turn to the top of page 66 you were asked,
4 "Based on your review of the document Mr. Birchfield,
5 does this refresh your recollection that in September
6 of 2020 you proposed to Johnson and Johnson through its
7 representative Mr. James Murdica to settle all ovarian
8 cancer claims both current and future through the
9 Imerys bankruptcy for a total of \$3.25 billion?" And,
10 your answer was, "So, I submitted this -- I submitted
11 -- I submitted this proposal, that is true." That was
12 your response, correct?

13 A That is my response, that I --

14 Q Right. And --

15 A -- submitted this proposal but -- but the proposal
16 --

17 MR. BRODY: -- and -- and --

18 MR. POLLOCK: Your Honor, if -- I'm getting
19 sandbagged with a document at the last second. A page
20 I have never read and a witness I cannot prepare
21 because I didn't know he was going to go when they've
22 actually produced the document as exhibit five. I
23 would beg you, give him some latitude to answer the
24 question because Mr. Brody wants to steam roll this
25 thing. But, it's not the Brody hearing. I mean --

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1 we've got to hear from the witness.

2 THE COURT: True. But that was the question
3 that was posed on March 25th.

4 MR. POLLOCK: No sir. The fact is it was --

5 THE COURT: The settlement -- the settlement
6 number of --

7 MR. POLLOCK: -- this is -- yes.

8 THE COURT: -- I remember specifically.

9 MR. BRODY: Correct.

10 THE COURT: And, it came from Mr. Haas's
11 testimony was -- with regard to the settlement, drew
12 some reaction. So, that -- that's not a number that
13 was really hidden. At least wasn't hidden from me Mr.
14 Pollock.

15 MR. POLLOCK: Your Honor, Mr. Haas testified
16 that he thought Andy had reneged on a deal. And he
17 (indiscernible)

18 THE COURT: That number --

19 MR. POLLOCK: -- he quoted directly from the
20 transcript at that point in time. Now we're going to a
21 completely different section of the transcript which I
22 have not had the opportunity to prepare this witness
23 on. I'm just simply asking for a little bit of
24 latitude. Mr. Birchfield is trying to explain the
25 answer. But, if -- if you don't want to give it to me

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1 that's -- that's your courtroom and Judge I respect it.

2 THE COURT: Well, you asked the question, is
3 that the number?

4 MR. BRODY: I -- I asked -- yeah, I asked --

5 THE COURT: Was that your response --

6 MR. BRODY: I asked -- yeah -- the question
7 was that --

8 THE COURT: That's -- that's the response.

9 MR. BRODY: -- correct. And, it's --

10 THE COURT: So, that's the response from Mr.
11 Birchfield at this point.

12 MR. BRODY: Correct. And, if -- if there is
13 --

14 THE COURT: It can be addressed.

15 MR. BRODY: -- yes Your Honor. And, if
16 there's some -- you know -- additional explanation that
17 Mr. Pollock thinks needs to be made about that --

18 THE COURT: Counsel is entitled to the answer
19 to the question. It may go -- it works on both sides.
20 So, if he needs further explanation I'm sure he'll have
21 the opportunity.

22 MR. BRODY: Yeah. And, it's -- it's -- you
23 know -- frankly it's -- it's impeachment. It's not --
24 you know -- it's -- it's his own testimony.

25 THE COURT: Continue. Yes.

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1 MR. BRODY: Thank you.

2 THE WITNESS: (indiscernible)

3 THE COURT: I don't want you directing --

4 MR. BRODY: Now, focusing --

5 THE COURT: -- Mr. Birchfield, you're a
6 witness.

7 THE WITNESS: I understand.

8 THE COURT: You don't direct any questions to
9 the Court.

10 THE WITNESS: I understand.

11 THE COURT: You direct to Counsel if there's
12 anything -- so you -- your focus is with regard to
13 Counsel.

14 THE WITNESS: Yes.

15 MR. BRODY: Thank you.

16 THE WITNESS: Yes Your Honor.

17 BY MR. BRODY

18 Q So, Mr. Birchfield, September of 2020 at --
19 at that time I take it in your view there may be
20 others, but the two big differences in the talc matters
21 writ large between September of 2020 and the time of
22 the LTL-2 bankruptcy proceeding last year were the
23 number of filed claims and the fact that J and J had
24 proceeded with the bankruptcy, is that fair?

25 A And, there were multiple -- there were multiple

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1 differences between September '20 and -- and today.

2 Q All right. Do you --

3 A And --

4 Q -- I'm sorry, go ahead.

5 A -- so -- but this is not -- this is not a proposal
6 to settle all claims for 3.25 billion. I answered the
7 question that that was the proposal that I submitted.

8 But, I did not agree that that was a proposal to settle
9 all current and future talc claims, ovarian cancer
10 claims in the Imerys bankruptcy for 3.25.

11 Q All right. Well -- well, we'll let the --
12 the record of the -- your testimony today and your --
13 your prior testimony -- you know -- stand for the words
14 that are going to be written on the transcript. My
15 question was -- was actually about the big differences
16 or any differences -- big differences between the
17 litigation at that time, September of 2020 and as of
18 the time of the LTL-2 bankruptcy proceeding last year
19 and in your view the -- the two big differences are
20 simply the total number of filed claims and the fact
21 that as of last year J and J -- L.T.L. was in
22 bankruptcy, right?

23 A Those are two big factors. Those are not the only
24 big factors.

25 Q Those -- those -- but you would agree those

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1 -- those are the big differences, right?

2 A Those are two of --

3 MR. POLLOCK: Objection, argumentative.

4 Asked and answered.

5 THE WITNESS: -- those are two of the
6 differences --

7 THE COURT: I'm going to overrule the
8 objection.

9 BY MR. BRODY:

10 Q All right. Do you recall giving a second
11 deposition in the L.T.L. bankruptcy proceeding in May
12 of last year?

13 A I do.

14 MR. BRODY: Can I get a copy of that? And,
15 if I may approach?

16 THE COURT: Yes.

17 MR. BRODY: Thank you.

18 MR. POLLOCK: Your Honor, again, I object.
19 This was not part of the record. It was not even a
20 partial part of the record. This is a brand new
21 document being given to me on the fly which they
22 obviously had in advance. I object to its use.

23 THE COURT: To the extent this is going to be
24 for impeachment Mr. --

25 MR. BRODY: This is for impeachment Your

1 Honor, yes.

2 BY MR. BRODY

3 Q So, Mr. Birchfield, this is a copy of -- a
4 transcript of a deposition you gave on May 30th of last
5 year, correct?

6 A Yes.

7 Q And, if you would turn to page 101 of that
8 transcript? Are you there?

9 A Yes.

10 Q And, there's a question, "Just following up
11 on your testimony that the situation is much different
12 today, the world has changed, other than the number of
13 change -- number of filed and unfiled claims, had there
14 been any other developments pertinent to the talc
15 litigation that you think would raise the settlement
16 amount?"

17 Your answer was, "There may be others but the two
18 big differences were the total number of filed claims
19 in September 2020 and J and J's filing of bankruptcy,
20 the debtor's filing of bankruptcy." And, that was your
21 testimony on May 30th of last year, correct?

22 MR. POLLOCK: Your Honor, I object under the
23 Doctrine of Completeness. The question in line -- and
24 this actually starts at page 100 --

25 THE COURT: I'm going to give you an

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1 opportunity Mr. Pollock to address that on cross
2 examination.

3 MR. POLLOCK: Fair enough.

4 THE COURT: For completeness. Yes.

5 MR. BRODY: (indiscernible) yeah -- thank you
6 Your Honor.

7 BY MR. BRODY:

8 Q Putting the September 2020 proposal aside
9 you've made additional settlement proposals to Johnson
10 and Johnson as part of the Tort Claimant Committee in
11 the L.T.L. bankruptcy, correct?

12 A I have.

13 Q In fact, you led the team effort on behalf of
14 ovarian cancer plaintiffs to reach a mediated
15 resolution of talc claims against J and J in the first
16 L.T.L. bankruptcy, correct?

17 A I did.

18 Q And, you had stated that there was in depth
19 discussion of the value of talc claims from both sides
20 within the context of that mediation, correct?

21 A That would be true.

22 Q All right.

23 A I -- you're -- you're asking me if I said that --
24 I'm -- I'm sure that I have. I don't recall saying
25 that. But, that's certainly true.

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1 Q Do you have -- do you have -- do you have
2 your hearing exhibit binder there?

3 A I do.

4 Q And, if you would turn to tab 16? You there?

5 A I am.

6 Q You recognize that document as a
7 certification that you prepared, correct?

8 A I do.

9 Q And, if you would turn to paragraph 11 of
10 your certification, you wrote or you signed the
11 statement, "With mediators involved there was in depth
12 discussion of the value of the talc -- of talc claims
13 from both sides," correct?

14 A That's correct.

15 Q All right. But, notwithstanding discussion
16 of your position in the mediation context, the amount
17 that you think would be reasonable compensation for
18 ovarian cancer claimants is something that you consider
19 to be confidential attorney work product, correct?

20 MR. POLLOCK: Your Honor, I object. I need a
21 time frame because this has been going on for four
22 years, the facts have changed. So, if we're going to
23 have a discussion regarding what they are worth I'd
24 like to know what time that discussion occurred.

25 THE COURT: That's -- that's a fair question

1 -- fair objection.

2 MR. BRODY: The question was -- I -- I don't
3 think specific at all to time frame Your Honor, it was
4 simply --

5 THE COURT: Do you have a time frame then?

6 MR. BRODY: -- it was simply if he -- if he
7 considers that to be attorney work product. I don't
8 think --

9 THE COURT: At any time?

10 MR. BRODY: -- I -- yeah. I don't think
11 there's a temporal component to that.

12 THE COURT: Okay. I -- I ruled --

13 BY MR. BRODY

14 A Okay. I just want to make sure I understand.
15 You're asking me if the -- if the value -- how I would
16 value a -- a claim -- a plaintiff's claim, if that is
17 attorney client work product?

18 Q I'm asking you if the amount you think would
19 be reasonable compensation for ovarian cancer claimants
20 is something you consider to be confidential attorney
21 work product?

22 A It can be.

23 Q It's not something you would disclose, is it?

24 A No. We have talked -- I mean, we have talked --
25 we've talked in open court about factors that would

1 come into play in evaluating what a reasonable -- you
2 know -- what reasonable settlement values would be for
3 -- you know -- for claimants.

4 Q Do you still have a copy of your May 30th
5 deposition there? It's the smaller one.

6 A Yes.

7 Q And, if you would, turn to page 94, line 14.
8 Are you there?

9 A Yes.

10 Q You were asked, "And you won't tell us what
11 amount you think would be reasonable compensation for
12 ovarian cancer claimants, correct?" And, Ms. O'Dell
13 objects on the basis that it's been asked and answered
14 and says, "It's protected by Rule 408. It's protected
15 by the attorney client work product privilege and I
16 would instruct the witness not to answer."

17 And, if you go to the next page you're asked
18 whether you would accept that instruction and you say,
19 "My lawyer's instruction, yes." That was your
20 testimony, correct?

21 A That is my testimony.

22 Q All right. Similarly, Beasley Allen's view
23 of what amount, on average, any resolution of its filed
24 claims must be is confidential and protected attorney
25 work product, correct?

1 A It can be.

2 Q All right. And, so you -- didn't take issue
3 when Ms. O'Dell objected on that basis to that same
4 question when you were asked that question in the
5 course of the second L.T.L. bankruptcy proceeding when
6 you were deposed on May 30th of last year, right?

7 A I did not. I followed the advice of Counsel.

8 Q All right. In other words, Beasley Allen's
9 assessment of case values and injuries is its work
10 product, right?

11 MR. POLLOCK: Objection --

12 THE WITNESS: It can be.

13 BY MR. BRODY:

14 Q And, when you do that kind of assessment,
15 that kind of assessment is based on confidential client
16 information?

17 A It can be, yeah.

18 Q Damages analysis as well? You consider that
19 to be work product?

20 A It can be.

21 Q Based on confidential client information?

22 A It can be.

23 Q All right. And, because you're trying to
24 draw this distinction saying, "It can be," and I'm
25 taking from that and I'm going to -- I'm going to go

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1 with you here. Sometimes it's not. Why don't you tell
2 me why it is that you are couching your answers?

3 A Well, if I'm -- if I'm arguing before a jury I'm
4 going to put forward in closing argument -- I'm going
5 to put forward the information in the analysis and make
6 a recommendation about -- you know -- what that value
7 is. But -- but there is a process in -- in getting
8 there. So, it depends on the context.

9 It depends on -- you know -- what the setting is.
10 You -- you would -- you would discuss those -- those
11 factors in mediation. You would discuss those -- you
12 know -- in court -- in court proceedings. So, to say
13 that it is -- you know -- that it's protected attorney
14 client -- you know -- privilege just as a -- a blanket
15 statement is more than I could -- more than I could
16 just embrace.

17 Q Well, clearly if you were standing in this
18 courtroom and you were talking to the jury over there
19 and you presented the jury with a number you're --
20 you're -- you're telling the jury; here's what we want
21 you to give to --

22 THE COURT: You can't suggest that in New
23 Jersey.

24 MR. BRODY: All right. If you were not --

25 THE COURT: You can't suggest a number.

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1 MR. BRODY: -- if you were not in this
2 courtroom --

6 BY MR. BRODY:

7 Q All right -- all right. So, we're -- we're
8 taking you out of this courtroom. Okay? We're --
9 we're taking you -- we're taking you to a jurisdiction
10 where you're presenting that information to the jury as
11 -- to -- to go with your -- your hypothetical. And --
12 you know -- when you do that, you're -- you're telling
13 the jury; here's -- here's what we think you should
14 award to my client, right?

15 A Yes.

16 Q Right. And, that's very different than the
17 internal analysis that goes on that -- that makes you
18 arrive at a place where you have an opinion -- you know
19 -- here's what I think this case -- you know -- might
20 really be worth in a settlement context or -- or
21 potentially in any other context, right?

22 A I think so. I'm not sure I follow.

23 Q Well, I mean it -- it -- it -- it's clearly
24 attorney work product to you to the extent that you
25 followed Ms. O'Dell's instruction and objection in your

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1 deposition in the L.T.L. bankruptcy proceeding and
2 refused to answer that question, right?

3 A Right. But there -- right. That is true. But,
4 there are -- there are different -- there are different
5 contexts. What are -- what are we talking about? Are
6 you talking about the -- you know -- the value of an
7 individual claimant? Are you talking about the value
8 of all ovarian cancer claimants?

9 Are you talking about the -- the value of -- you
10 know -- of all the -- the claimants that were part of
11 the L.T.L. bankruptcy plan? Are you talking about the
12 value in -- in the context of litigation? Are you --
13 are you talking about in the context of a bankruptcy
14 proceeding? There are a lot of -- multiple variables
15 that would come in to play.

16 And so, I -- I don't -- I don't know. I don't --
17 I honestly don't remember the full lead-up to, you
18 know, to Ms. O'Dell's objection and me following her
19 instruction. So, I can't answer more than that.

20 Q All right. So your testimony is, yes, you
21 know, our analysis of claim values is our work product
22 but we might present our work product in a certain
23 forum if we decided that it would be helpful to us or
24 necessary, you know, for example, for the purposes of
25 making an argument to a jury?

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1 MR. POLLACK: Objection, he never said -- he
2 never said he was providing work product, he said he
3 would provide a number and there may be a big
4 difference because one is attorney-client privilege,
5 how do you get to the number versus the number? So the
6 word work product to me is very latent here because
7 obviously, it has relevance in the attorney-client work
8 product scenario.

11 MR. BRODY: Sure, I'll rephrase the question.

12 BY MR. BRODY:

13 Q Fair to say that you would assess, in the
14 circumstances, whether the information was
15 confidential, attorney work product, based on client
16 confidences that you felt needed to be protected or
17 not; you would make that assessment as a lawyer?

18 A I would.

19 Q All right, fair enough. You would agree,
20 though, with Mr. Conlan that Beasley Allen send its
21 work product to Legacy; correct?

22 A We did provide some work product to Legacy.

23 Q All right and some of that work product is
24 described on a privilege log that was provided to
25 Johnson and Johnson, in connection with a third-party

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1 subpoena that was served in the M.D.L., correct?

2 A Yes.

3 MR. BRODY: All right, if I may approach with
4 a copy of the log?

5 THE COURT: Are you familiar with that, Mr.
6 Pollack?

7 MR. POLLACK: I am.

8 THE COURT: All right, you may approach.

9 MR. BRODY: Okay.

10 MR. POLLACK: I got it. Are we marking this
11 for identification?

12 MR. BRODY: Yeah, we can do that.

13 THE COURT: What number are we on with regard
14 to -- is it D-1, JJ-1, how are we marking?

15 UNIDENTIFIED MALE: We could make this JJ-1.

16 THE COURT: Okay.

17 BY MR. BRODY:

18 Q Now we tried to make it as big as possible
19 for orienting you. The entries run across the page and
20 then they are continued on the back side because there
21 are so many columns on the chart. So if you, just to
22 orient you, if you look at number one, document one,
23 runs all the way across and then it continues. You see
24 the doc number on the next page, continues across,
25 through the description; are you with me?

1 A I do, I do.

2 Q Okay. So if you would, why don't we start
3 and they go in order, as they were numbered on the
4 privilege log. If you turn to document number 165.
5 Are you there?

6 A Yes, document 165?

7 Q Correct, you got it?

8 A Yes.

9 Q And that's -- the date there is May 7th,
10 2023; correct?

11 A Yes.

12 Q The author is Leigh O'Dell; correct?

13 A Yes.

14 Q And if you look at the description for
15 document 165 on the next page, it's described as an
16 ovarian cancer leadership memo to Legacy, discussing
17 ovarian cancer case values, injuries and damages
18 analysis; correct?

19 A Yes.

20 Q And that's one of the items of work product
21 that Beasley Allen sent to Legacy; correct?

22 A That would be my understanding.

23 Q Okay and the next document 166 is the same
24 thing; correct?

25 A Yes.

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1 Q All right and if you would turn to document
2 234, as another example. Tell me when you're there.

3 A Document 234, I'm there.

4 Q All right. That's a document that you're the
5 author of; correct?

6 A Yes.

7 Q And the date on that is May 15th, 2023;
8 correct?

9 A Yes.

10 Q And if you carry it over to the next page,
11 it's a draft attachment regard ovarian cancer claim
12 values; correct?

13 A Correct.

14 Q And that's another one of the work product
15 documents you sent over to Legacy; right?

16 A I presume so.

17 Q Yeah. The fact that you shared your work
18 product with Mr. Conlan last year is not a fact that is
19 disclosed in any of the certifications that you've
20 filed in this case, is it?

21 A No.

22 Q By the way, it's not just amount, it's number
23 of claims. You consider, for example, your sources of
24 information used to identify what you believed to be
25 the potential number of future talc claims against

1 Johnson and Johnson to be confidential and protected
2 work product; right?

3 A I mean, it could be, yes.

4 Q All right. If you would, you still have the
5 May 30th deposition?

6 A Yes.

7 Q If you would, turn to page 78?

8 A Page 73, I'm sorry?

9 Q I'm sorry, 78.

10 A 78.

11 Q And you were quoted, the question was, you
12 note later in that paragraph, you were being asked
13 about a document. "In addition, any resolution must
14 factor in at least 20,000 future claims. Do you see
15 that?" You said, "I do." Question, "Do you know where
16 you got that figure?"

17 There's an objection and Ms. O'Dell says, "You may
18 not answer where you got the information provided. You
19 can answer yes or no but beyond that is protected by
20 the attorney-client work product privilege and I would
21 instruct you not to answer."

22 And your response was, "I do know where I got that
23 information, it would be work product." That was your
24 answer; correct?

25 A About the total number of future claimants and

1 where I got that number?

2 Q That's right.

3 A Yes.

4 MR. BRODY: All right. After the second --
5 so we're at a bit of a transition point here, Your
6 Honor and I don't know if you were going to take a
7 break this afternoon?

8 THE COURT: Yeah, I intended to. I wanted to
9 see if this is a good, natural spot to take a break?

10 MR. BRODY: This is perfect.

11 THE COURT: Let's do it, yeah.

12 MR. POLLACK: Can I find out one thing? Are
13 we finishing today or how long are we going to be?

14 THE COURT: That was going to be my next
15 question too.

16 MR. BRODY: Again, I certainly hope --

17 THE COURT: All right.

18 MR. BRODY: I would be done examining Mr.
19 Birchfield before 4:30. It's just a question of how
20 long Mr. Pollack may have and then what could come
21 after that.

22 THE COURT: Okay, well, if we don't finish
23 today, we have to continue. I mean, that's the bottom
24 line.

25 MR. BRODY: Right.

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1 THE COURT: Okay. Let's take a break, we'll
2 go for ten. Off the record.

3 (Off the record at 3:29:00 p.m., back on the record at
4 3:45:50 p.m.)

5 THE COURT: Mr. Brody? Thank you.

6 MR. BRODY: Thank you, Your Honor. Mr.
7 Birchfield, are you ready?

8 THE WITNESS: Yes.

9 BY MR. BRODY:

10 Q After the second L.T.L. bankruptcy filing,
11 you, Ms. O'Dell and Mr. Meadows from Beasley Allen,
12 served as representatives of a Beasley Allen client,
13 appointed to serve on the Tort Claimants Committee on
14 that bankruptcy; correct?

15 A Yes.

16 Q And that also involved a mediation; correct?

17 A It did.

18 Q And you mentioned that fact in the January
19 29th certification, not the mediation but the fact that
20 you and Ms. O'Dell and Mr. Meadows served as
21 representatives on the T.C.C. in the certification you
22 submitted on January 29th; correct?

23 A Correct.

24 Q When you described your role in the second
25 L.T.L. bankruptcy, you did not disclose in that

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1 certification that you were engaged in communications
2 and discussions with Mr. Conlan, throughout the course
3 of that mediation; correct?

4 A In the certification, I said, I said, when we had
5 our first encounter, you know, with Legacy and when we
6 had our first meeting, I said that. I didn't talk
7 about the mediation or anything further.

8 Q Right and you didn't disclose the subsequent
9 communications where you provided your work product and
10 that the discussion went on beyond May 2nd of 2023.
11 That's just not in your certification; right?

12 MR. POLLACK: Objection to the phrase work
13 product. There's no proof of it, I would like to see
14 what it is, I don't know what we're talking about.

15 THE COURT: Well --

16 MR. BRODY: I was just referring to his prior
17 testimony, Your Honor.

18 THE COURT: Okay, Mr. Birchfield's testimony?

19 MR. BRODY: Yes, right.

20 THE COURT: Okay.

21 BY MR. BRODY:

22 Q That's not in your certification; right?

23 A It's not in my certification.

24 Q All right. What is in your certification is
25 a statement that your first contact with Legacy, in

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1 connection with the J and J Talc Litigation, was in
2 April of last year; right?

3 A Correct.

4 Q And that your first meeting with anyone from
5 Legacy was on May 2nd of last year; correct?

6 A Correct.

7 Q And you met Mr. Conlan that day too; didn't
8 you?

9 A On May 2nd, yes.

10 Q That's right. All you said about your
11 interactions with Mr. Conlan in your certification is
12 that you met him for the first time on May 2nd, 2023;
13 right?

14 A Correct.

15 Q And again, as I think you've said it, it
16 doesn't say anything about your written communications
17 with him; right?

18 A Correct.

19 Q Or any subsequent meetings with him after May
20 2nd, 2023; correct?

21 A No, it just discusses our initial contact, that's
22 correct.

23 Q Right and now going back to that first
24 meeting on May 2nd, 2023, you didn't contact anyone at
25 Johnson and Johnson to tell them that you were going to

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1 be speaking with Mr. Conlan; did you?

2 A I did not.

3 Q You didn't tell any of Johnson and Johnson's
4 outside counsel either; did you?

5 A No.

6 Q So there was no sort of, you know, hey guys,
7 I've got this meeting set up with James Conlan, I know
8 he represented you in the Talc matter, are you okay
9 with that? You never went to J and J with any sort of
10 request like that; right?

11 MR. POLLACK: Objection, argumentative
12 because he's trying to make a closing during the middle
13 of questioning.

14 MR. BRODY: Your Honor, it's a --

15 THE COURT: I'm going to overrule the
16 objection.

17 MR. BRODY: Thank you.

18 THE COURT: Do you understand the question,
19 Mr. Birchfield?

20 THE WITNESS: I think so, Your Honor. I did
21 not mention -- there were a lot of things that I did
22 not mention in the certification. I was just merely
23 stating, you know, when the contact began and this was
24 a meeting with Legacy who had an alternative, you know,
25 path that we were exploring through the mediation

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1 process. That, it was a meeting with Legacy, a vendor
2 but I did not -- I didn't -- I didn't disclose that to
3 J and J, it never crossed my mind.

4 BY MR. BRODY:

5 Q Right, it never crossed your mind to go to J
6 and J and say, hey, I'm going to have a meeting with
7 your former outside counsel on the talc matters and are
8 you guys okay with that?

9 A No, the only thing that I knew about Jim Conlan at
10 that point was the -- you know, the one thing that Jim
11 Murdica had told me in all late 2020, that he was
12 working with the F.C.R., that was it.

13 Q And then -- so you certainly didn't ask Mr.
14 Conlan, hey, do you have a waiver that allows you,
15 former J and J lawyer, on the talc matters, to talk to
16 me, Andy Birchfield, representative on the T.C.C.?

17 A I certainly did not. I mean, in this context, I'm
18 meeting with a vendor, Legacy, who has an alternative
19 path. That, there was nothing that suggested that a
20 waiver would be in order.

21 Q And to the extent you know, nobody else from
22 Beasley Allen asked Mr. Conlan that either; right?

23 A No, not to my knowledge.

24 Q Including Ms. O'Dell; right?

25 A Including Ms. O'Dell.

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1 Q Who is co-lead Counsel for the plaintiffs in
2 the M.D.L., right?

3 A Correct.

4 Q All right. You just said that, you referred
5 to Legacy, did I get that right, as a vendor?

6 A Yes.

7 Q And that's something that appears in the
8 certification that you submitted on January 29th;
9 doesn't it?

10 A Probably so.

11 Q If you want to take a look, your
12 certification is Tab 16 and it's Paragraph 19?

13 A It's consistent with my testimony.

14 Q You said you just -- you always viewed Legacy
15 as a vendor, who I guess had a creative solution to a
16 difficult problem based on their collective experience
17 in similar transactions?

18 A Correct.

19 Q Legacy is not the only company that acquires
20 and manages mass tort liabilities, is it?

21 A It's not. To my understanding, it is not.

22 Q There are others like End Star Group?

23 A Correct.

24 Q I don't know how to pronounce it, Delkitus
25 (phonetic), Delkitus Group?

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1 A I haven't had any dealings with them but I
2 understand, they would be -- it would be another
3 competitor in this area.

4 Q Global Risk?

5 A Sounds right.

6 Q R and O Legacy?

7 A I don't know that name, but.

8 Q You didn't partner with any of those
9 companies, though; did you?

10 A Okay, I didn't partner with any of those
11 companies. I wouldn't consider our engagement with
12 Legacy as partnering either.

13 Q Okay, well, I'll use your word, engagement.
14 You didn't enter into an engagement with any of those
15 other companies; right?

16 A I didn't talk with any of those other companies.
17 I don't have an engagement, you know, with Legacy. You
18 know, I mean, we did -- obviously, we did talk and we
19 worked through mediation, a mediation process together.
20 I have not talked with any of the -- any of the other
21 companies that you named.

22 Q All right. You didn't go to a single, not
23 just the ones I named, you didn't go to a single other
24 company that acquires and manages tort liabilities?
25 Any of the companies in Legacy's field and ask them;

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1 hey, can you help us out here? We're looking for
2 somebody to work with in this Talc realm?

3 A I did not do that, I did not reach out to Legacy.

4 Q You spoke to Legacy?

5 A I did.

6 Q You continued to speak with them after the
7 first meeting?

8 A I did.

9 Q You continued to speak with Mr. Conlan after
10 the first meeting?

11 A Yes.

12 Q You sent him the documents that we see on the
13 privilege log after the first meeting; right?

14 A Yes.

15 Q You never went to any other company and said;
16 hey, can you guys do this, right?

17 A No.

18 Q All right, you chose to partner with
19 (indiscernible) since you objected to that. You chose
20 to work with the one that had Johnson and Johnson's
21 former lawyer from the talc matters as its C.E.O.,
22 didn't you?

23 A No, Legacy came to us. They came to us and they
24 laid out this proposal that would be a path to the
25 finality that we understood that J and J had been

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1 seeking. Finality outside of bankruptcy. So Legacy
2 came to us, so we explored that option and we explored
3 that option through the mediation process and beyond.

4 Q You said Legacy came to you. You wanted
5 Legacy; didn't you?

6 A No, not at the beginning. So Legacy came to us.
7 Legacy came to us with this proposal and a proposal, a
8 path, that would give J and J, you know, finality. I
9 became -- I became concerned about -- about Legacy and
10 about this path, whether it is with Legacy or with
11 another entity.

12 So when Legacy first talked with us, when they
13 first talked with us, you know, alarm bells were going
14 off in my mind. Not for, you know, any client
15 confidences from J and J but as -- I quickly came to
16 understand that this is an offer. This would be an
17 offer and Legacy or one of its competitors could engage
18 in this transaction without us. So it was a serious
19 concern.

20 Then I saw it as a potential opportunity. As I
21 explored more on behalf of the Plaintiff Leadership, as
22 we explored this more and vetted this, you know, we saw
23 this as an opportunity and an opportunity that was
24 before us in the second bankruptcy and the mediation
25 that Judge Kaplan had ordered and so we began to

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1 explore that option. But it was not something where we
2 were seeking -- we were seeking out, you know, Legacy
3 or any of its competitors.

4 Q So you took advantage of what you saw as an
5 opportunity; correct?

6 A Yes.

7 Q And you took advantage of that opportunity
8 with Legacy, a company whose C.E.O. had represented
9 Johnson and Johnson as its outside counsel in the talc
10 matters; correct?

11 MR. POLLACK: Objection to the phrase
12 advantage.

13 THE COURT: We can rephrase the question,
14 yeah.

15 MR. BRODY: Sure.

16 BY MR. BRODY:

17 Q You recognized it as an opportunity and you
18 proceeded to work with Legacy, a company whose C.E.O.
19 was previously outside counsel for Johnson and Johnson
20 on the Talc Matter?

21 A It is true that we explored this with Legacy, it
22 is true that Jim Conlan is the C.E.O. of Legacy and it
23 is true that Jim Conlan worked with Faegre while Faegre
24 was representing J and J. None of that, none of that
25 was really on the table, none of that was part of the

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1 -- you know, part of the evaluation of this process.

2 We did not need any of the information that Jim
3 Conlan would have had as a lawyer. That's -- that's
4 the reason that a --

5 Q (indiscernible) sorry, I didn't mean to cut
6 you off.

7 A That's the reason we put, I put in my
8 certification, when the first contact with Legacy was
9 because by that point, by May 2nd of 2023, late-April
10 when we had the first contact from anyone from Legacy.
11 By that point, we had been in the Talc Litigation for
12 ten years.

13 So we had gone through mediation, we had gone
14 through an estimation process, we had tried 12 cases.
15 We had extensive, extensive understanding of the -- you
16 know, the claims and the claims value. We had
17 extensive understanding of J and J's approaches to the
18 litigation and their approaches to settlement. We've
19 gone through one bankruptcy and we're in the middle of
20 a second.

21 Q And so what you did is, you made clear that
22 you wanted to include Legacy in the upcoming mediation
23 that you anticipated to be part of the LTL-2
24 proceeding; correct?

25 A We did want Legacy to be part of that mediation

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1 because Legacy offered -- offered a path to give J and
2 J the finality that it had been telling us that it must
3 have and had been telling the Court that it could only
4 get through bankruptcy, which we knew not to be true.
5 Legacy provided a win-win.

6 Q You didn't come out of that May 2nd, meeting
7 and tell Mr. Conlan to take a hike; right?

8 A I did not.

9 Q You told him you wanted him in the mediation;
10 right?

11 A I don't know that coming out of that meeting -- I
12 mean, at some point, you know, there was a discussion
13 about Legacy being involved in the mediation process.
14 I can't say that it was the day after or right out of
15 that meeting or even at that meeting, I can't say. But
16 we did -- we did want Legacy to be involved in the
17 mediation process.

18 Q And in fact, I mean the Plaintiff Steering
19 Committee has filed a brief in the M.D.L., arguing, in
20 order to keep its communications with Mr. Conlan
21 confidential that, it made clear, counsel made clear,
22 that it wanted to include Mr. Conlan's company, Legacy;
23 right?

24 A We did.

25 Q Right and -- and as I said, you didn't tell

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1 him after that meeting, you know, no, we're not
2 interested, we don't want to work with you guys; right?

3 A We did not.

4 Q You told him that you wanted him, that you
5 felt he had a role; right?

6 A We considered -- we considered, you know, after
7 that meeting, that the Legacy option was still a viable
8 option. It would give J and J what we understood J and
9 J to want and that was the finality. They wanted the
10 Talc Liability off its books. This was a way, a way,
11 that we could get there. We were exploring multiple
12 paths to get reasonable values for our clients.

13 Q And if you -- my question was I think a lot
14 simpler than that and a little different. You felt
15 that Mr. Conlan and Legacy had a role to play in the
16 mediation; correct?

17 A Yes, I thought that they had a role to play, as
18 presenting an option.

19 Q Right and they were, as far as you were
20 concerned, authorized to play that role. I mean, you
21 wanted them; right?

22 A I did not -- I didn't ask that they be excluded
23 from the mediation, I did not. I did want the -- the
24 mediators to -- you know, to hear from Legacy, I did.
25 I did that -- for me personally, and I was providing

1 leadership.

2 Q And they did what you wanted, Legacy did what
3 you wanted; right?

4 MR. POLLACK: Objection. When you say, "Did
5 what you wanted," can I have some clarification, Your
6 Honor?

7 THE COURT: Well, did you understand the
8 question?

9 THE WITNESS: No, I mean --

10 THE COURT: Okay, the witnesses did not
11 understand the question.

12 MR. BRODY: I would be happy to clarify, Your
13 Honor.

14 BY MR. BRODY:

15 Q Legacy, you said that you wanted Legacy to
16 communicate with the mediators; right?

17 A I did want Legacy to communicate with the
18 mediators.

19 Q And they did what you wanted them to do;
20 right?

21 A They did communicate with the mediators.

22 Q Right, yes, they did what you wanted them to
23 do; right?

24 MR. POLLACK: Objection -- is the doing what
25 you want them to do, the problem is, the mediators are

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1 having a discussion. So you're talking about a
2 discussion with a third-party.

3 THE COURT: Mr. Birchfield answered the
4 question. He said, they did what he wanted them to do.

5 MR. BRODY: Fair enough, Your Honor.

6 BY MR. BRODY:

7 Q Again, without telling Johnson and Johnson;
8 correct?

9 A I did not -- I did not tell Johnson and Johnson.
10 I anticipated that Johnson and Johnson would engage in
11 the mediation, as Judge Kaplan ordered the parties to
12 do. And that if the mediators -- if you viewed Legacy
13 as a viable option that, that would be part of the
14 mediation process in the next few days.

15 But J and J did not engage in the mediation
16 process but it wasn't that we were trying to keep that
17 from J and J. I thought Legacy -- I thought Legacy's
18 involvement in the mediation would be front and center
19 with all of the parties.

20 Q So the answer to my question is no, you
21 didn't disclose that to J and J. You didn't disclose
22 the fact that you felt that Legacy had a role to play
23 in the mediation and you had authorized them to play
24 that role?

25 A I did not.

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1 Q Okay. We talked about some of the documents
2 authored by Ms. O'Dell and by you, that you sent over
3 to Legacy, that appear on the privilege log. Do you
4 know who -- you do know, I expect, who Nile Davies is?

5 A I do.

6 Q He is or was a Project Manager at Beasley
7 Allen last year during the course of the mediation;
8 correct?

9 A Correct.

10 Q And he also sent over various documents to
11 the mediators; right?

12 A He sent some documents that were part of the
13 mediation process. I don't know if he sent anything
14 directly to the mediators, I don't recall.

15 Q All right, if you could take a look at the
16 privilege log, if you still have it up there with you.
17 I would like you to take a look at Document 315?

18 A 315, I'm sorry?

19 Q Yes, 315, we'll just take a look at one of
20 them.

21 A Okay.

22 Q Are you there?

23 A Yes.

24 Q And you see that on May 12th, Mr. Davies sent
25 over and it carries over to the next page, "Draft

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1 Q.S.F. qualifications for the Legacy ovarian cancer
2 proposal," right?

3 A Right.

4 Q And you were providing information to Legacy
5 to work to develop that proposal with Legacy; correct?

6 A No, that's not correct.

7 Q All right. You just randomly asked Mr.
8 Davies to send over information? I mean, there must
9 have been a reason for it?

10 A He sent the information but that was -- that was
11 based on qualifications, client qualifications that had
12 been -- you know, that had been developed before any
13 contact with Legacy. So it was providing information,
14 it wasn't developing with Legacy, you know, the
15 criteria.

16 Q Well, one of the things you did develop with
17 Legacy was a term sheet for the Legacy ovarian cancer
18 claim proposal; right?

19 A No.

20 Q All right, why don't you take a look at 381.
21 Tell me when you're there.

22 A 381, I'm there.

23 Q That's a seven page document, you're the
24 author; correct?

25 A Correct.

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1 Q The date on that is May 12th, 2023; right?

2 A Yes.

3 Q And if you flip to the next page, that is a
4 draft term sheet for the Legacy ovarian cancer
5 proposal; correct?

6 A Yes.

7 Q By the way, that draft term sheet went back
8 and forth and back and forth numerous times; didn't it?

9 A It went back and forth several times. That was
10 not a --

11 MR. BRODY: All right, if you take a look --
12 if you take a look --

13 MR. POLLACK: Your Honor, could he please
14 finish answering the question?

15 BY MR. BRODY:

16 Q Why don't we take a look at 103 and tell me
17 when you're there?

18 A 103, I'm there.

19 Q And if you take a look at 103, this is
20 something that Mr. Conlan sent to Jonathan Terol
21 (phonetic) at K.C.I.C. and it's an e-mail from ovarian
22 cancer counsel, forwarding the draft term sheet and
23 protocol for ovarian cancer claims administration;
24 right?

25 A Yes.

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1 Q And if we go forward in time, and there are a
2 lot of them so I don't want to stop on all of them but
3 why don't we take a look at 330. Tell me when you're
4 there?

5 A I'm there.

6 Q And this is a document from you; right?

7 A Yes.

8 Q It's dated June 7th, 2023?

9 A Yes.

10 Q And if you would flip over to the next page.
11 This is an e-mail from ovarian cancer counsel, that's
12 you, ovarian cancer counsel; right?

13 A Yes.

14 Q To Legacy, attaching edits to proposed
15 ovarian cancer claims term sheet; correct?

16 A Correct.

17 Q And I don't want to go through every entry
18 but you'll agree that, that wasn't the only time that
19 drafts were going back and forth; was it?

20 A There were -- you know, as I recall, there were a
21 couple of back and forth on the term sheets. I mean,
22 one of the things that you see in the privilege log is
23 that, if there were e-mails that were the same e-mail,
24 different people, it's in here multiple times, it's the
25 same document. But yes, there were e-mails back and

1 forth on the term sheet but that is not a term sheet
2 that was developed with Legacy.

3 So the Plaintiff's Leadership had developed a term
4 sheet. We had a term sheet that we had all agreed on
5 in March, late March of 2023. And that is -- that's
6 before the LTL-1 bankruptcy is officially dismissed and
7 the second bankruptcy is filed. So we, as the Ovarian
8 Cancer Leadership Committee, had developed a -- we had
9 developed a term sheet with the terms and had offered
10 to provide that to J and J in an in-person meeting with
11 Mr. Haas and Liz Formernard (phonetic).

12 So we had offered to do that. That's in late
13 March of 2023. So that -- the term sheet, the term
14 sheet that is here, is not a term sheet that was
15 developed with Legacy. It was already developed. So
16 --

17 Q Fair enough and so what was happening here
18 was, there are communications going back and forth
19 between you and Legacy, including Mr. Conlan,
20 exchanging edits to that term sheet; right?

21 A The -- the back and forth with that term sheet was
22 with Scott Gilbert. There weren't any changes to the
23 term sheet other than typos and grammatical issues.
24 Scott Gilbert is a stickler for that but the term sheet
25 was not developed.

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1 It was a term sheet that we had already developed
2 as the Ovarian Cancer Committee. We were providing it
3 to -- to Legacy and to K.C.I.C., so that they could --
4 so that they could test that with claimant data.

5 Q So let me make sure I understand. So you
6 wanted to get them the term sheet and in the process,
7 there was some back and forth. You were fixing things,
8 you were making edits. I imagine you're getting down
9 to a pretty granular level at that point; fair?

10 A Granular level in grammatics and typos but the
11 term sheet was our term sheet and it's what we had --
12 what we had developed through -- you know, we had
13 developed through mediation in LTL-1. We had
14 developed, you know, that in the wake of the Third
15 Circuit's -- the Third Circuit's dismissal order on
16 January the 30th.

17 We had been putting together proposals inside --
18 inside bankruptcy proposal, as well as outside options
19 at that point. We had that term sheet together.

20 Q And then all of that was shared with Legacy
21 for what you -- and I take it that the Plaintiff
22 Steering Committee was accurate in its description of
23 documents in the privilege log that it provided, in
24 order to assert privilege claims over documents that
25 had been identified by K.C.I.C., fair?

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1 A I would assume so.

2 Q And so if the privilege log reflects that
3 those communications regarding the term sheet went back
4 and forth numerous times over a period of 21 days,
5 between May 18th and June 8th that, that would be
6 accurate; right?

7 A I don't have any reason to doubt the accuracy of
8 the privilege log.

9 Q Okay and then the reason that you were
10 engaged in this back and forth was so that Legacy could
11 see, okay, here's what we have developed, we the
12 plaintiffs in the Talc Litigation, counsel representing
13 plaintiffs in the Talc Litigations, here's what we have
14 developed. And you said you -- Legacy could then sort
15 of test that against their claim values, was what you
16 said; right?

17 A No. I said that K.C.I.C., K.C.I.C., the claims
18 administrator, you know, entity that Legacy had brought
19 in to -- I don't know the official business
20 relationship but that K.C.I.C. could take -- could see
21 the claims criteria and they could process some claims
22 data to see, you know, if it works and how efficient it
23 would be.

24 That is -- that's part of the process with any
25 claims administration group that you're going to be

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1 utilizing in a mass tort settlement. So you know, that
2 was the -- that was the purpose of providing them with
3 the term sheet, which included the claims criteria --

4 Q And it wasn't just K.C.I.C., it was also
5 Legacy that was sending drafts back and forth; wasn't
6 it?

7 A That Legacy was sending drafts back and forth --

8 Q Legacy was commenting on the draft term
9 sheet?

10 A Yes, grammatical-type stuff, that's what I'm --

11 Q Well, it was -- it was deeper than
12 grammatical. It wasn't just, oh here's -- three weeks
13 later we found another typo, without revealing any of
14 the substance, it went deeper than just, there should
15 be a semi-colon here; right?

16 A I do not recall a single substantive change that
17 was made by Legacy to, you know, to the term sheet that
18 we had, that we had proposed.

19 Q So you went back and forth over the course of
20 three weeks on typos, that's your grammatical issues?

21 A I think that's an unfair characterization because
22 you know, in the -- we could go back and forth in two
23 hours and have really serious substantive discussions.
24 But you can go over a period of three weeks and not
25 have any substantive changes. It's just a matter of

1 timing.

2 The details, the substantive details of this term
3 sheet, had been developed by us. You know, similar
4 term sheets had been shared, you know, through the
5 mediation process with J and J. There were not
6 substantive issues to be dealt with, with Legacy.

7 Q So Legacy was reviewing -- I'm just trying to
8 bring this to a close. You guys developed a term
9 sheet, you share it with Legacy; right?

10 A We did.

11 Q And you say to Legacy, do you think this is
12 going to -- well actually, I'm not even going to ask
13 because there's a mediation privilege claim. So I was
14 going to ask you about what you said to Legacy about
15 the term sheet but I'm not going to ask at this point
16 because I don't want to invade the mediation privilege
17 that's been asserted.

18 Let me ask you this. In addition to exchanging
19 drafts of the term sheet, in addition to providing the
20 work product that you identified earlier, you also had
21 Zoom meetings to go over proposed claims administration
22 processes, right, without disclosing the substances of
23 the processes?

24 A We did, that's part of what I just described.
25 With K.C.I.C., processing claims data.

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1 Q You had additional meetings, in-person
2 meetings, after May 2nd of last year; right?
3

A We did.

Q And you discussed term sheet issues; right?

A No, no, I don't recall ever discussing any term sheet issues with anyone other than Scott Gilbert, back on the grammar and style issues. I mean, we discussed it, we discussed it in the essence of, you know, being able to describe for them and for K.C.I.C. how it would work, what would be -- you know, what would be valid claims, what would be excluded claims, what would be the medical records that would be necessary to identify those claims.

Q And so what you were doing was, you were engaging in close collaboration and strategy communications regarding how to consider, conduct, participate in, initiate and or continue to mediate with J and J regarding this proposal; right?

MR. POLLACK: Objection to collaboration, I'm not sure what that means but --

THE COURT: Do you understand the question, Mr. Birchfield?

THE WITNESS: I mean, I don't know what he means by collaboration --

THE COURT: Can you rephrase the question?

1 BY MR. BRODY:

2 Q Well let me ask you this. You're aware that
3 while plaintiffs in this litigation may have decided --
4 you know, may have asserted mediation privilege and so
5 these documents are not available, they've been kept
6 confidential from Johnson and Johnson. You understand
7 that Judge Snyder reviewed the documents in-camera;
8 correct?

9 A I do.

10 Q And you understand that after his in-camera
11 review, Judge Snyder found that the documents include
12 close collaboration and strategy communications
13 regarding how to consider, conduct, participate in,
14 initiate and or continue to mediate with J and J
15 regarding Plaintiff's proposal to resolve the talc
16 cases; right?

17 A Am I aware that he made that finding; is that what
18 you're asking me?

19 Q Yes.

20 A Yes.

21 Q He didn't get it wrong; did he?

22 A Well, I think that you could describe that as
23 collaboration.

24 Q All right, thank you, that's fine. He also
25 found --

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1 A In the sense that we may collaborate on --

2 MR. BRODY: I'm sorry, you've answered, Mr.

3 Birchfield and I'm -- this is --

4 MR. POLLACK: Actually, the question was
5 whether he thought Judge Snyder had it right and Mr.
6 Brody is again cutting him off. So to me, the question
7 is, on that phrase, there was a whole bunch of phrases
8 in there; does Judge Snyder have it right?

9 MR. BRODY: Well, let me ask this question --

10 THE COURT: You're asking for his opinion,
11 you're asking for Mr. Birchfield's opinion?

12 MR. BRODY: Let me ask this question.

13 THE COURT: Okay.

14 MR. BRODY: Because I, Judge Porto, I believe
15 I got an answer.

16 BY MR. BRODY:

17 Q So he found that there were regular
18 communications with Birchfield. That's you, right?

19 A Yes.

20 Q And other counsel for plaintiffs regarding
21 the foregoing matters, including when and how to
22 present the settlement proposal to J and J in the
23 context of mediation; correct?

24 A He did.

25 Q He also found that the communications

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1 included consideration of what mediator to use and he
2 found that it included the role to be played by the
3 mediator in the discussions; right?

4 A Yes, he made that finding.

5 Q In other words, the dynamics of the
6 mediation; fair?

7 A He did make that finding.

8 Q Your communication and -- and you agree with
9 me, that's sort of a mediation dynamics issue; isn't
10 it?

11 A About which mediator --

12 Q Which mediator to use and when?

13 A I don't recall -- I don't recall any of that, you
14 know, taking place here. Judge Kaplan -- Judge Kaplan
15 appointed -- he entered an order appointing the
16 mediators. That's -- that's who was used, I don't
17 recall anything -- I don't recall any discussions
18 beyond that.

19 Q You understand that none of the mediators
20 were aware that Mr. Conlan previously worked for
21 Johnson and Johnson as outside counsel on the talc
22 matters; right?

23 A I saw their answers to the interrogatories or --

24 Q So that's a yes, you're aware of that;
25 correct?

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1 A I am aware of that, yeah.

2 Q All right. Your communications with Mr.

3 Conlan did not end when the second L.T.L. bankruptcy
4 was dismissed; did they?

5 A They did not.

6 Q And you continued to discuss the Legacy
7 proposal with Mr. Conlan and others at Legacy; correct?

8 A We discussed a proposal, I mean, in a sense that
9 we had -- we had -- we had worked through the Legacy
10 approach, the structural optimization and
11 disaffiliation. We had provided, you know, Legacy with
12 a term sheet, including a matrix that we would support.
13 So that was in place.

14 So yes, I did have a follow-up conversation with
15 Mr. Conlan, as he testified today. I mean, would I be
16 willing to -- would I be willing to meet with J and J
17 executives, Mr. Haas, to walk through the grid and how,
18 you know, I believe that would be received by
19 plaintiffs across the county and how I believe that it
20 would garner the 95 percent voluntary opt-in, out.

21 We did have discussions. Mr. Conlan and I did
22 have discussions about, would you still support, you
23 know, this term sheet with this matrix? Would you be
24 willing to meet with J and J executives. So yes, we
25 did have conversations.

1 Q So you sat down and you talked about the
2 matrix, you talked about some of the things that you
3 had laid out with ovarian cancer counsel in the work
4 product documents we saw. I mean, that's sort of the
5 nuts and bolts of the matrixes. Assessment of claim
6 values, injuries, damages analysis. That all gets
7 wrapped up in there; doesn't it?

8 MR. POLLACK: Objection, compound. If we
9 could break that down, that would be helpful.

10 THE COURT: We're coming close to 4:30, so.

11 BY MR. BRODY:

12 Q My question, Mr. Birchfield, is simply, all
13 those factors get wrapped up into a claims matrix;
14 right?

15 MR. POLLACK: Objection to the word work
16 product in the last question, since he's not going to
17 rephrase.

18 MR. BRODY: I think I just did rephrase.

19 MR. POLLACK: No, you said all those factors,
20 which would include work product, which is the one I'm
21 objecting to. That's why I was asking for
22 clarification.

23 MR. BRODY: Assessment of claim -- let me ask
24 it this way, I'm happy to rephrase, Your Honor.

25 BY MR. BRODY:

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1 Q Assessments of claim values, damages
2 analysis, injuries. All of that gets wrapped up into a
3 claims matrix; doesn't it?

4 A I mean, a claims matrix would include, it would
5 include settlement values, so the value of the claims
6 in the settlement context. It would include the -- an
7 analysis of the injuries. What injuries are going to
8 be included or not. It would include the assessment of
9 risk factors and should there be reductions or
10 deductions for risk factors and if so, to what degree.
11 All of those factors and others are included in -- you
12 include in a matrix.

13 Q Right and the discussions that you were
14 having with Mr. Conlan included discussions of, you
15 know, why do you think that we could get a 95 percent
16 opt-in to this kind of settlement matrix; right?

17 A No.

18 Q All right, you just -- so let me ask it this
19 way. I mean, you just said and correct me if I'm
20 wrong, you just said that after the bankruptcy ended,
21 you and Mr. Conlan talked about, well, what kind of
22 support are we going to get for this proposal; right?

23 A No, I mean, not after the -- you know, we had this
24 discussion early on in the interaction, in the
25 mediation process. When we laid out our term sheet in

1 our matrix, we told -- we told Legacy, I'm sure we told
2 the mediators, that we would -- we're confident that we
3 would garner 95 percent participation, voluntary
4 participation in an opt-out, opt-in settlement program.
5 So we had those -- we had those discussions. That's
6 not something that I discussed, you know, with Mr.
7 Conlan.

8 MR. BRODY: Your Honor, we are at 4:30.

9 THE COURT: Do you need more time? How much
10 more time do you need, Mr. Brody?

11 MR. BRODY: I probably have 30 minutes.

12 THE COURT: Okay and we're not going to
13 continue today, we're going to have to look at another
14 day. And obviously, I don't want to look to you, Mr.
15 Pollack, and say you have to get things done in seven
16 minutes. So I think that's fair for you, after 30 more
17 minutes of Mr. Brody, for whatever examination time
18 that you need.

19 MR. POLLACK: I promise you, I need one-tenth
20 of what he's using.

21 THE COURT: Well, I'm not going to hold you
22 to it.

23 MR. POLLACK: Okay.

24 THE COURT: So we're going to adjourn today,
25 we're going to look at our calendars one more time.

1 Perhaps 30 minutes, more or less, perhaps ten minutes,
2 I don't know, Mr. Pollack but when we come back, we'll
3 do that. So let's all look at our calendars one more
4 time, we'll do what we did before, we'll send an e-mail
5 out, all right?

6 MR. POLLACK: And tomorrow does not work, I
7 assume? The Court --

8 THE COURT: Tomorrow doesn't work, no.

9 MR. POLLACK: Okay, thank you, sir.

10 THE COURT: What we're also looking at
11 anticipating is written closings. Is that what counsel
12 was looking at, revision, getting the transcripts and
13 then providing written closings to the Court?

14 MR. BRODY: We can do that. Judge Singh had
15 entered an order requesting simultaneous submission of
16 briefs from each side, two weeks after the conclusion
17 of the hearing and then replies a week after that.

18 THE COURT: Fair, yeah. I think that's a
19 good time period, assuming we get the transcript in
20 that time period.

21 JUDGE SINGH: Yep.

22 MR. BRODY: Okay, we were also prepared, Your
23 Honor -- I know that, Judge Porto, you had asked for us
24 to just close and present --

25 THE COURT: Well, I thought so too but maybe,

1 you know, in terms of getting a full aspect, whatever
2 closings are necessary. Judge Singh and I were
3 conferring today about that.

4 MR. POLLACK: Can we do something unique
5 since I've been doing this for 35 years now? Can we
6 file with both courts the same brief, at the same time?

7 THE COURT: Yes, that's exactly --

8 MR. POLLACK: That would be kind of fun,
9 right?

10 THE COURT: Yes, that's exactly what we
11 anticipated.

12 MR. POLLACK: Excellent.

13 JUDGE SINGH: And one cleanup for our docket
14 (indiscernible) I can't quite recall. If the
15 transcripts from these proceedings are not being filed
16 on the docket, please ensure that they are filed on my
17 docket so that the record is complete.

18 MR. POLLACK: Absolutely.

19 JUDGE SINGH: Thank you.

20 THE COURT: All right, everyone?

21 MR. POLLACK: Thank you, Your Honor.

22 THE COURT: Thanks so much, take care.

23 UNIDENTIFIED MALE: Thank you, Your Honor.

24 THE COURT: Court adjourned, we can go off
25 the record.

1 (Proceeding concluded at 4:31 p.m.)

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CERTIFICATION

7 I, Melissa Ulrich, the assigned transcriber, do
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9 on CourtSmart, timestamp from 01:36:22 to 04:31:32
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/s/ Melissa Ulrich

AD/T 658

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